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THE RECENT INSTRUCTION OF THE SACRED CONSISTORIAL CONGREGATION REGARDING MILITARY ORDINARIATES *

WITH the growth of the various branches of the service, with the increase in the number of Army posts, Airfields, Naval Stations, with the advent of more chaplains, secular and religious, it seems opportune and practical to desire a working knowledge of the functions of the Military Ordinariate and to look for solutions in the case of the many canonical problems within the structure of the Ordinariate itself and in its relationships with the bishops and provincials of the country.

Both objectives must rely on the aid of the Instruction which on April 25, 1951 the Sacred Consistorial Congregation issued revealing the mind of the Holy See concerning the nature and duties of the Military Vicars all over the world.[1] It is not addressed to any one Military Vicar in particular but presents some general and specific recommendations. The Holy See has issued these norms because it has recognized the permanency of the Chaplaincy as a part of the modern *cura animarum*. Because of this fact, the Holy See wants to make it very clear that the power of the Military Vicar is an ordinary power, though personal, and that his position is not merely a supervisory one, or that of a mere procurement office. I am given to understand that after this Instruction was issued, Mili-

* Paper read October 12, 1951, by Rev. Joseph F. Marbach, J.C.D., Assistant Chancellor of the Military Ordinariate, U. S. A., at the Annual Meeting of the Canon Law Society of America, in Chicago.

[1] Cf. *AAS*, XLIII (1951), 562.

tary Ordinariates were established in Canada, France and South Africa, and that now the countries of Brazil, Venezuela, the Philippines and Holland are forming similar offices. The Instruction is not long and thus I deem it fitting to run through a translation first, and then return to discuss some of the points mentioned. The translation will attempt to be merely as literal as possible.

I. The Instruction

It has always been a solemn concern to the Holy See that the general laws of the Church be piously and conscientiously observed by all her members everywhere, as much as possible; nevertheless on account of special circumstances of times and men, sometimes new norms seem necessary to be decreed to care for the new needs of the faithful. Thus the Sacred Consistorial Congregation derogates from the common law wherever necessary by making some special decrees:

1. Whoever has the position of Military Vicar is endowed with an ordinary yet a special jurisdiction to be exercised towards the spiritual good of those faithful who have been committed to him.
2. The jurisdiction which the Military Vicar enjoys is personal, that is, it is extended to only those subjects who are mentioned in the Decree of the Sacred Consistorial Congregation appointing him and establishing his Military Vicariate, even if those same subjects should reside in military posts and in various places especially allocated to the soldiers.

   The jurisdiction of the Military Vicar is not exclusive, and thus it does not in the least withdraw the persons, the posts, and places reserved for the soldiers, i.e. military barracks, naval armories, airfields, military hospitals, etc., from the power of the local Ordinary; and this jurisdiction does not in any way beget any exemption, nor does the position as a Chaplain beget any excardination from the diocese.

   Nevertheless in these places the local Ordinaries and the pastors should exercise a power over the subjects of the Military Vicariate that is only secondary: it is thus necessary to have some mutual agreement whereby their works may be united and to have concord in carrying out various actions and functions especially outside the limits of the military posts.

3. A canonical domicile is not recognized except a diocesan or parochial domicile.

   For causes indeed of the subjects of the Military Vicariate—whether contentious causes among themselves or criminal causes —the Military Vicar elects some diocesan or metropolitan Tribunal once and for all and this elected Tribunal must be approved by the Holy See.

4. As often as new buildings especially allocated to soldiers, or ships, or airplanes must be blessed, and in other cases of this nature, this norm is observed:
   if the ceremony is ordered by the military commanders, the Military Vicar imparts the blessing: if he is unable to do it, the Ordinary of the place in which the ceremony is arranged, after the Military Vicar advises him of his inability to come, gives the blessing by his own authority;
   if the ceremony indeed is ordered by the civil authorities, only the Ordinary of the place is competent in this case.

5. The Military Vicar should inform the local Ordinaries about the Chaplains who are sent into their dioceses or who leave these same dioceses.

6. The usual registers of baptisms, confirmations, marriages and deaths, inscribed according to the usage approved by the Church in her Roman Ritual (Tit. XII, I–IV), the Military Vicar should order to be kept either in the general Archive of the Military Vicariate or in the central Archive of the Chaplains if there should be one; in this latter case however an obligation is imposed of sending to the Curia of the Military Vicariate an authentic copy of these same books at the end of every year, according to the rule set forth in Canon 470, §3.

7. The Military Vicar has the faculty of producing an *Ordo* for the recitation of the Divine Office and for the Offering of Mass for the use of the Chaplains, insofar as circumstances would recommend it to him, observing in every detail the common laws of the Church, especially the norms prescribed in the Constitution *Divino afflatu* of November 1, 1911 (*AAS*, III [1911], 633–651), and the Motu Proprio *Abhinc duos annos* of October 23, 1913 (*AAS*, V [1913], 499), and also the Instructions that have been issued or may be issued by the Congregation of Sacred Rites. This *Ordo* the Chaplains are able to use everywhere when they

celebrate Mass for the benefit of the soldiers, and other priests can use this *Ordo* as they offer Mass in the churches or oratories reserved for the soldiers.

8. The Military Vicar is able to obtain, as other local ordinaries, Quinquennial faculties, and also the Decennial faculties in places where such are customarily granted.
9. The Military Vicar is obliged to make a report to this Sacred Congregation every third year concerning the activities and condition of the Vicariate.
10. Each Chaplain in exercising the care of those souls which have been entrusted to him by the Military Vicar shall remember that he is bound by the duties and obligations of pastors, insofar as these correspond to his special circumstances.
11. The Chaplains, just as the Military Vicar, are not at all bound by the obligation of offering the Mass *Pro populo;* if indeed the Chaplains receive a salary or a notable reward, the Military Vicar shall be able to oblige them to apply the Mass *Pro populo* at least on the days prescribed in Canon 306; let this be his norm also.
12. Those priests who are chosen to be Chaplains " should gleam with the brightness of an extraordinary sanctity, and should be worthy ministers of Christ, faithful dispensers of the mysteries of God, effective helpers of God instructed for every good work " (Pius PP. XII, Exhortation, *Menti Nostrae, AAS,* XLII [1950], 658) so that, aroused by the inspiration of their vocation, they might actively fulfill their parochial function as if an affectionate service, and, what is most important, that they might fight for souls so that their Apostolate might shine forth from the living form of Christ. In this particular question, the Military Vicar should have clearly before him the exhortation of our Supreme Pontiff: " We beseech you, Venerable Brethren, that, as much as possible, you should not plunge inexperienced priests into the middle of such works, nor assign them to places far removed from the principal city of the diocese or from its larger cities. For if they could stay in a state of life of this kind—far removed, unskilled, exposed to dangers, wanting in prudent teachers—without a doubt these same priests and their eagerness would be able to come to various misfortunes " (Exhortation, *Menti Nostrae, l.c.,* p. 692).

13. Also, the very best and skilled religious priests should be selected to the post of Chaplain, with the observance nevertheless of the special rules given for them by the Sacred Congregation in charge of the Affairs of the Religious, and indeed, if it is possible, these should be sent to places where there may be a house of their Religious family.

14. The Chaplains should wear the ecclesiastical habit according to the legitimate customs of the places, nor should they wear the uniform unless their duties should advise it or the civil laws order it, using nevertheless at the same time some special sign of the ecclesiastical office.

    Likewise, if the custom exists, they ought always to wear the clerical tonsure, or crown, according to the rule of the sacred canons.

15. In order moreover that the Chaplains may be moved by the wish and desire of fulfilling the Divine Will, it is fitting that a spirit of prayer should not in the least languish or grow sluggish in them. They should give themselves a constant nourishment—not only the Eucharistic Sacrifice devoutly offered, but also all those things which, approved by long usage, very forcefully bring it about that the souls of men keep from faults and strive after the more solid virtues: and it is recognized by all that among these, spiritual exercises enjoy the principal place.

16. The various forms and systems of a Christian Apostolate which today, because of the special needs of the Christian people, are of so great importance and of such great seriousness should be promoted by Chaplains who are accurately instructed and personally in union with this Apostolate.

17. The Chaplains should strive to be present at the conferences or meetings which take place according to Canon 131 in the diocese where they are stationed.

18. The Military Vicar gives testimonial letters to those who, when they had served in the Army, aspire to enter Religion or to Sacred Orders, as often as according to the norms of the sacred canons testimonial letters are required from the Ordinary of the place.

    This present Instruction our Holy Father, Pius, by Divine Providence PP. XII, after hearing the report of the undersigned

Cardinal Secretary of the Sacred Consistorial Congregation, deigned to ratify, and ordered it to be published. All other things to the contrary notwithstanding, even those that merit special mention.

Given at Rome, at the office of the Sacred Consistorial Congregation, April 23, 1951, on the feast of St. George the Martyr.

His Eminence Card. Piazza, *Secretary*

Rev. Giuseppe Ferretto, *Assessor*

With this Instruction as the background, we shall now consider some aspects of the Military Ordinariate for our country.

II. Who Are the Subjects of the Military Vicar for the United States?

The Instruction reminds the Military Vicars of the world that their personal subjects are only those whom the Sacred Consistorial Congregation places under their care by particular decrees.

His Eminence Cardinal Spellman was appointed by the Holy See as the Military Vicar for the United States Armed Forces on December 11, 1939. By decree of the Sacred Consistorial Congregation, the following Catholics were put under his jurisdiction:

a) All members of the Armed Forces in active Military service of the Federal Government or of the particular States;
b) Their wives, children, relatives, and servants residing in the same house with them;
c) Civilians staying within the Military Area;
d) Religious men, Sisters, and lay people who are attached to Military Hospitals;
e) All priests who are serving the Armed Forces.

On July 13, 1946, his jurisdiction was extended also to the following civilians, but in occupied territories only, e.g. Germany, Japan, Trieste, Austria:

a) Those who in any manner pertain officially to the Military Government;
b) Those who officially accompany or assist the Military Government or the Government of Occupation, as well as those who are employed by the Military Government in an administrative capacity;

c) All persons who are employed by the Government of the United States, even though they do not strictly pertain to Military Government or the Government of Occupation and all persons engaged in diplomatic and similar Missions in foreign nations.

d) The members of families of those belonging to the Armed Forces, residing in occupied territories.

Moreover, in May, 1946, the Holy See placed under the jurisdiction of the Military Vicar the Chaplains, the patients and the permanently domiciled personnel of the Veterans Administration hospitals. On September 27, 1950, the Holy See extended the jurisdiction of the Military Vicar to all United Nations' Chaplains assisting their troops in Korea.

III. To Which Superior Are the Chaplains Subject?

The Chaplains then are in the unusual position of having a "triple obedience". They remain of course bound to their own bishops and provincials who have, we may say, lent them to the Military Vicar who temporarily has a primary jurisdiction over the Chaplains. Thus it may be that a bishop wants a Chaplain to return to a diocese to take a parish or some other post. Here would come into force the primacy of the Military Vicar who might not be able to agree to recommend the release of a Chaplain before the termination of his years of service, e.g. the time of an emergency.

Further, though the jurisdiction of the Military Vicar is primary, it is not exclusive, and thus the Chaplain is also subject to the local Ordinary of the post where he is assigned. Chaplains are therefore asked:

1. To report to the local bishop when they enter and leave the diocese;
2. To observe the local diocesan regulations;
3. To follow any instructions or limitations that may be put on the use of the local diocesan faculties. For example some dioceses have a record of every marriage performed in the diocese (e.g. Salt Lake); the local bishop may ask that the Chaplain forward a copy of the record of any marriage he may perform, but of course the primary place of record is the Military Ordinariate.

The Military Vicar and his auxiliary bishops cannot possibly visit all the camps for Confirmation and the Chaplains are urged to welcome the local Ordinary to visit the camp and confer the Sacrament of Confirmation, or to visit the camp on any other occasion.

III. Marriage Problems

A) *The Military Ordinariate and Matrimonial Causes*

On December 24, 1940, His Eminence the Military Vicar sought the direction of the Holy See regarding the establishment of a Tribunal for Matrimonial Causes as these might arise in the Ordinariate. The Sacred Consistorial Congregation replied with the statement that the Sacred Congregation of the Sacraments granted competence to the Tribunal of the Archdiocese of New York, until six months after the signing of a peace agreement, so that, *servatis de iure servandis,* the subjects of the Military Vicar were permitted to institute action in matrimonial causes before the Tribunal of the Archdiocese of New York when there were grave reasons for doing so.

Thus when either of the Tribunals mentioned in Canon 1964 relative to the competent Judge cannot be contacted, the Tribunal of the Archdiocese of New York would accept the petition. For example, the marriage may have taken place behind what is now termed the Iron Curtain and the Catholic man may have been in the Regular Army—without a civilian domicile—for many years. In such a formal cause, the New York Archdiocesan Tribunal was authorized to act.

At the Military Ordinariate itself, lack of form cases have been accepted if the petitioner has had any connection at all with the military since the rules for such cases are not rigid. Thus would be accepted the lack of form case of the civil law wife of a soldier who needs a decree of nullity about a prior civil marriage to validate her present civil marriage with a soldier. In an emergency, the same would be true if the civilian girl desires to marry a soldier on a post before a Chaplain and the case is discovered only shortly before the scheduled marriage.

A petition in a *ligamen* case is accepted if the petitioner is at least baptized in some Protestant sect. Pauline Privilege cases are also processed. In both *ligamen* and Pauline Privilege cases it is not

demanded that the petitioner be a military person in the strict sense. If the petitioner resides on the post, or might be subject to the Military Vicar for some other reason, the Military Vicar has been considered competent to judge his *ligamen* or Pauline Privilege case. The final decision in these two types of cases is given by one of the Judges of the New York Archdiocesan Tribunal, acting under a special Mandate from the Military Vicar.

The New York Archdiocesan Tribunal is not asked to consider those cases popularly termed "Montana Cases" because the New York Archdiocesan Tribunal was granted competence for military causes by the Sacred Congregation of the Sacraments, and not by the Sacred Congregation of the Holy Office which has exclusive competence over these cases of the dissolution of the natural bond of marriage; also even if the Sacred Congregation of the Holy Office had granted competence, the competent Tribunal according to Canon 1964 could usually be contacted.

The present Instruction is for all countries and demands no immediate change in the present policy of handling marriage cases at the Military Ordinariate. The Instruction does not require the Military Vicar to constitute a Tribunal within his own Ordinariate.

Probably the Military Vicar will officially designate the New York Archdiocesan Tribunal as the Tribunal of the Ordinariate "*semel et pro semper*" in the words of the Instruction and this will mean of course that the New York Archdiocesan Tribunal may accept formal causes—and, after the designation of the Cardinal, the Privilegium Fidei cases. The New York Archdiocesan Tribunal however, to repeat, is not an ordinary Tribunal for a soldier but what we may call a relief Tribunal when the only redress of the petitioner is to appeal to this Special Tribunal of the Military Vicar.

B) *The Jurisdiction of a Chaplain to Witness Marriages*

At one time a Chaplain could assist only at the marriages of those who were attached to his post. This was changed so that a Chaplain may assist at the marriage of *milites peregrini* who come to his post. The Chaplain may also assist at marriages in virtue of his own faculties on any post he visits provided the post does not have a Catholic Commissioned Chaplain of its own. He likewise may assist at the marriages of any of those who belong to his post any-

where, i.e., even off the post. He cannot validly assist at the marriages of *milites peregrini* off his post.

For example, a Catholic girl from Chicago wants to marry a Catholic man from Chicago who is stationed at Fort Bragg, N. C. They want a military wedding but the girl's family is unable to travel to Fort Bragg. The Chaplain at Fort Sheridan in Illinois could perform the marriage validly in his own chapel. Permission of course should be secured from the girl's pastor.

The above considerations have in mind only Catholic soldiers. To provide for a marriage between a non-Catholic soldier and a Catholic civilian girl, the Chaplain must secure from the local Ordinary an appointment as an assistant in the parish which embraces that particular post or field, or naval hospital, etc., and this appointment should specifically include general delegation for marriage. This is a concrete instance of cooperation between the local Ordinary and the Military Vicar. In a certain diocese, the bishop refuses to grant such an appointment and thus a Chaplain, who admittedly should have this principle clearly in mind, may forget his lack of jurisdiction and proceed to the marriage of a non-Catholic soldier and a civilian girl which would be invalid in this instance. In one case in mind, a sanation was the final solution.

C) *The Military Chaplains Have General Delegation to Assist at Marriages*

This favor was granted in an audience of March 24, 1941, by Pope Pius XII, after conferring with the Cardinal Secretary of the Sacred Congregation of the Sacraments (S. C. de Sacramentis, 5446/41).

D) *Veterans Administration Chaplains and Marriages*

A Veterans Administration Chaplain as such has no jurisdiction to witness a marriage even for one of his Catholic patients or for permanently domiciled employees. No indult was granted by the Holy See whereby these Chaplains may receive from the Military Ordinariate general delegation for marriage, nor are they considered as pastors. The Pagella of Faculties for the Veterans Administration Chaplains is a special category.

In some cases where the Veterans Administration hospital and its surrounding streets have been established as a parish, there is of course no difficulty for the pastor of that parish to take care of

marriages. For example, the Veterans Administration hospital at Batavia was established as the parish of St. Camillus and the Chaplain there is the Administrator of the Parish. In many cases also the pastor of a parish cares part time for a Veterans Administration hospital in his parish.

Ordinarily however, the Veterans Administration Chaplain must secure an appointment as an assistant with general delegation in the local parish in order to assist at marriages. The full record is put in the local Church register and only index information is sent to the Military Ordinariate, since the Chaplain acts in virtue of his local parochial status.

On the other hand, the Military Ordinariate has the power to grant dispensations in favor of those persons under the Veterans Administration who were put under the care of the Military Vicar in May, 1946, that is, the Catholic patients and the permanently domiciled personnel of the Veterans Administration hospitals throughout the country because the Military Vicar can use his Quinquennial Faculties for them.

For the registration of baptisms, First Communions, and Confirmations Veterans Administration Chaplains are requested to observe the procedure of sending the full records to the Military Ordinariate and index information to the parish.

IV. The Selection of Chaplains

A. One of the purposes of this paper is to mention some relationships between the Military Ordinariate and the local bishops. The norms of the Instruction (Nos. 12 & 13) dealing with the qualities of the Chaplains, are not concerned with points of canon law, but with the *Suprema Lex,* the supreme law, the salvation of souls. Here definitely is a relationship between the Military Ordinariate and the local bishops. In this connection, the Military Ordinariate requires that the bishop will not merely grant his permission but also add his recommendation and that thus only his best men may be allowed to become Chaplains.

B. The best religious are to be selected! As was mentioned in reference to the local bishops, so also in regard to provincials, the Military Ordinariate does not accept the mere permission of the provincial but requires the positive recommendation that the religious priest has the necessary qualifications to be a Chaplain.

Moreover, the Military Ordinariate advises the religious and secular Chaplains to send to their superiors and bishops a copy of the monthly report that is sent to the Ordinariate.

C. The Military Ordinariate has the faculty to grant permission to religious priests to remain outside their religious house more than six months. On September 28, 1948, the Rescript 2280/41 of the Sacred Congregation for Religious was renewed "*perdurantibus praesentibus rerum adiunctis*", so that the Military Vicar could grant the necessary permission to the religious who seek to become Chaplains, after they had secured the consent of their religious superiors.

For religious priests who desire to serve as Veterans Administration Chaplains, the religious superior in each case must apply to the Sacred Congregation for Religious requesting an indult, according to the norm Canon 606, § 2.

V. The New Instruction and Testimonial Letters

The Code of Canon Law does not mention the Military Vicar in reference to testimonial letters but now the Holy See establishes the prerogative of the Military Vicar to grant such letters. Actually, our Military Ordinariate has been issuing testimonial letters for the veterans. This work, as can be imagined, is very tedious and rather laborious, yet it is considered one of the most important tasks. About 900 investigations are processed each year. For each veteran seeking testimonial letters the Ordinariate wishes to receive the following data: 1) the full name; 2) the branch of service; 3) the serial number; 4) the dates of induction and separation; 5) the names of any Catholic Chaplains he may have known and the approximate dates and places where he knew them. The Ordinariate then returns certain form letters which the man is asked to sign, to add his present mailing address, and to mail to the respective office of the government, whereby the man requests a summary of his service record, and of his medical and mental history, to be released to the Military Ordinariate. The above mentioned data should be sent to the Ordinariate three months before the letters become necessary, according to the time period allowed, in Canon 545, § 1, to the one who makes the investigations.

Father Joseph Quinn's 1948 Dissertation[2] had pointed out the

[2] *Documents Required for the Reception of Orders*, The Catholic University of America Canon Law Studies, n. 266 (Washington, D. C.: The Catholic University of America Press, 1948), pp. 122-125.

practical wisdom of requesting testimonial letters from the Military Vicar for the veterans. The Military Vicar has indeed valuable sources of information about the veterans, in the sense that the Military Ordinariate has prepared signed releases, as noted above, which the government has honored. In addition, a questionnaire is sent to each Chaplain whom the veteran had known while in service.

Father Quinn mentions the view of Larraona who held that because the Military Vicar is a personal ordinary it is not necessary to seek testimonial letters from him since the Code speaks only of an *Ordinarius loci*.[3] Father Quinn answers this strict interpretation by showing that it is a supplementary general principle that the religious Superior and the bishops should make all possible investigation about the worthiness of a candidate. The Military Ordinariate had therefore written to all the bishops and the provincials offering to investigate their candidates who are veterans. In some cases—a few cases which makes all the tedious labor worthwhile—there have been discovered some rather disturbing deficiencies on the part of prospective secular and religious priests and brothers.

The recent Instruction now in very clear words declares in reference to testimonial letters that the Military Vicar is equivalently the Ordinary of the place, a multi-located Ordinary if you will, the *Ordinarius loci* of a soldier wherever that soldier might serve. The Military Vicar is a personal Ordinary, yes, but by a fiction of law he is the *Ordinarius loci,* of the place where the soldier is serving.

There are some who say that the moral deficiencies in a service record should not be revealed as this would seem to preclude the efficacy of Penance and of the Grace of God, but in this most important work for the glory of the Church the Ordinariate has decided to reveal everything to the provincials or the bishops who, in each individual case, may then carefully decide whether the moral and mental deficiencies revealed would ever appear again, to the detriment of souls.

VI. A Special Ordo for the Military Ordinariate

The permission for a special *Ordo* for the Mass and the Divine Office of the Chaplains creates a difficult question that cannot be answered quickly. As can well be imagined, a particular *Ordo* for the Divine Office would perhaps not be feasible in this country

[3] Canons 544, § 2; 993; 994.

where there are so many religious Chaplains who quite naturally will want to keep their own proper Religious Breviary. Perhaps the Instruction has in mind those countries where there are very few if any religious priests as Chaplains (e.g. a few weeks ago we met the Chief of Venezuelan Chaplains and he mentioned they had no religious priests as Chaplains).

As for the Mass, the Chaplains have special privileges whereby they may say the following Masses:

1. On Sundays and Feast days of Our Lord—the Mass of the Most Holy Trinity.
2. During the Easter Octave—the Mass of Easter Sunday.
3. On other doubles of the 1st or 2nd Class, the Mass of the Blessed Virgin as specified for the various times of the year.
4. On other days, they have a choice of the Mass of the Blessed Virgin, the Mass *Tempore Belli,* or the Mass of Requiem.

Some Chaplains follow the *Ordo* of the diocese where they are if they have the usual Missal and this would seem to depend on the discretion of the Chaplain. In war areas of course the Military Missal is more convenient than the large usual one.

Since Veterans Chaplains, unlike Military Chaplains, do not possess the privilege of using the Military Missal and of celebrating throughout the year *the five* special Masses in accordance with respective rubrical requirements, Veterans Administration Chaplains in celebrating Holy Mass at the hospital, and in reciting the Divine Office, are obliged to follow the *Ordo* prescribed by the local Ordinary of the diocese in which their hospital is situated. This, of course, would not be true regarding the Divine Office for Veterans Chaplains who are religious and who, while serving as chaplains, are still residing in their local religious house. Nor would it be true for the Divine Office concerning Veterans Chaplains who are religious and who are residing outside the houses of their community by virtue of an apostolic indult "*manendi extra*", in accordance with Canon 606, § 2, for these religious are not exclaustrated and follow the rules and regulations of their institute. But the aforementioned two groups of religious serving as Veterans Chaplains in celebrating Holy Mass at the hospital are obliged to follow the *Ordo* prescribed by the local Ordinary.

On the other hand, since the Veterans Chaplains are subjects of the Military Vicar and an integral part of the Military Vicariate, in the Sacred Canon of the Mass celebrated at the hospital, the name of the Military Vicar should be inserted: " et antistite Nostro Francisco." In Masses celebrated outside the hospital, the name of the local Ordinary should be used.

The Veterans Administration Chaplain has no faculties to trinate—to do this he needs an indult from the Apostolic Delegate—or for the *Antimensium*. Moreover, the Military Ordinariate has no special faculties for putting up the Stations of the Cross in Veterans Administration hospitals.

The foregoing analysis of specific situations in which both the Military Ordinariate and all Ordinaries are affected by the recent Instruction has been illustrative rather than comprehensive. Nevertheless, it may be hoped that the selection of situations has provided a sufficiently typical view of the Military Ordinariate's contacts with other ecclesiastical authorities and that thus an insight has been offered through which all its contacts with those authorities may operate with great effectiveness in promoting the salvation of souls.

UNITED STATES IMMIGRATION LAWS

Officials of Catholic organizations interested in the immigration crisis, at a meeting in the headquarters of the National Catholic Welfare Conference, reached an agreement that the United States must broaden its basic immigration policy and take an active role in relieving the overpopulation problems of European nations. The meeting was attended by officials of the Legal Department and the Bureau of Immigration of the National Catholic Welfare Conference, of the National Councils of Catholic Men and Women, of the Catholic Committee for Refugees, of the National Catholic Welfare Conference War Relief Services, and of the National Conference of Catholic Charities. It was pointed out that present immigration laws discriminate against certain nationality groups. It was suggested that eligibility requirements for entrance into the United States should be tempered and that the unused quotas of a particular year should be distributed to other nationals who need them most. It was shown that the present national origins formula is not functioning inasmuch as certain quotas are far from being utilized.

RELATIVE NORM OF FAST: HISTORICAL CONCEPT AND FUNCTION

III. The Relative Norm of the Collation in the Eighteenth Century

BEFORE pursuing an investigation into the nature, history, and function of the Relative Norm of fast in the eighteenth century, it will be useful to the reader to have a recapitulation of the results of the previous portion of this study, concerning an examination of this subject since about the beginning of the seventeenth century.[1] It would appear that in the latter part of the sixteenth century the general practice of the collation as a means of nourishment commenced. The question as to the permissible amount of the collation, which owes its existence to custom, became one of general importance since that time. The following resumé of the seventeenth century doctrines on the present topic is advisedly taken from the text of Reiffenstuel (+1703), since his authority and historical position with reference to the purposes of this research make the presentation of his views here very opportune. His text affords a concise, but thorough and substantially complete review, and thus also furnishes an appropriate introduction to the present section of this study.

As appears in his text, Reiffenstuel remained content with reporting what he called the principal and more probable opinions of authorities, who, he pointed out, agree at least therein, that the collation must remain moderate in quantity, so as not to emerge as a complete meal or half meal.[2] His exposition divides the field of doctrines or opinions into a triple classification, which is borne out in the previous discussions of this study.

[1] The previous part of this study appeared in the January issue of The Jurist, XII (1952).

[2] "Resp. II. Quantum cibi in tali refectiuncula, seu Collatione licitum sit sumere, . . . Referam igitur praecipuas, et probabiliores sententias Doctorum, saltem in hoc convenientium, quod refectiuncula illa (ut ipsum nomen demonstrat) debeat esse modica, ne transeat in coenam vel semicoenam."—*Theologia Moralis* (Mutinae, 1745), Tomus II, Tract. X, Distinct. II, Quaest. II, n. 24. (Hereafter cited: *Theol. Moral.*)

The first opinion, dating from the time of Filliucius (+1622), allows at most six ounces or a half pound of food at the collation.[3] It may be noted that this doctrine as reported by Reiffenstuel does not admit of any variance in quantity. It seems thus to be the statement of the Absolute Norm, as it is called.

A second view, originating practically at the same time as the former, maintains that a certain or determined measure of the collation as to the amount of food can not be fixed in a uniform manner for all obliged by the law of fast. On the contrary, the quantity is subject to variation. The diversity results quite naturally from discrepancies in age, constitution, condition of life, and occupation, and differences of climate; thus, in colder localities, as a matter of fact, a larger collation is allowed than in warmer regions. In particular, this opinion justifies its position concerning occupational and labor groups therein, that since the work involved in these categories begets in some instances a complete exemption from the law of fast, similarly toil, study, or the like, furnishes a reasonable basis for permitting a collation larger than usual.[4] If somewhat more food than usual is thus allowed, one is logically prone to seek at least an approximated quantum representing the " usual " amount permissible for everyone. The text of Reiffenstuel senses this inquiry, and tenders the following general rule formulated by the opinion here considered, as the view of Reginaldus (+1623) and of the eminent moral theologian and canonist, Laymann (+1625). Thus ordinarily, and unless there is some justifiable, excusing cause, such as toil or illness and the like, at the col-

[3] " Et quidem Filliucius tr. 27. c. 2. n. 32. ait . . . ad summum 6 uncias seu mediam libram sumi posse, ut volunt (inquit) plerique ex Recentioribus."—*Ibid.*, n. 25. The text of Filliucius does not disclose that he maintained the view stated here as his own. The six ounces or half pound measure is, as explained in the context, the former equivalent of half the " modern " pound of sixteen ounces—*loc. cit.*

[4] " Deinde alii asserunt, non posse taxari, seu determinari certam pro omnibus jejunantibus quantitatem cibi pro Collatione vespertina, sed eam variam esse posse pro varietate tum personarum, uti videre est in provectioribus aetate, infirmis, nobilibus personis, qui pluribus epulis et delicatioribus assueti sunt: tum locorum, uti accidit in frigidis regionibus, ubi major Collatio conceditur, quam in calidis: tum exercitii et laboris. in quo quis occupatus est, vel defatigatus. Nam, quia huiusmodi labor quandoque totaliter excusat a jejunio, pariter existente aliqua rationabili causa v.g. laboris, studii, aut huiusmodi, aliquid ultra consuetum sumi potest in Collatione."—*Ibid.*, n. 26.

lation one obliged by the law of fast may not appreciably exceed the fourth part of the amount which is, in view of his personal complexion, sufficient for his usual full meal.[5] Without the necessity of a labored analysis, the following considerations appear evident concerning the amount of the collation under this rule. The norm itself manifests in concept and function an entirely relative approach and result in respect to the question. From a purely negative aspect of the subject, the present opinion does not advance a norm which seeks to impose upon all a basic and numerically uniform quantity of food at the minor repast. From a positive aspect of the matter, this opinion proposes as available to each and every individual an amount which does not appreciably exceed the one-fourth part of his usual, complete repast. Moreover, if there is a justifiable cause for doing so, such as the requirements incident to occupation or physical debility or infirmity, or the more exacting demands of climate, more may be taken at the minor meal to an amount which notably exceeds the relative quantity stated, but not more than about half of the individual's usual, full meal. Or, to express the ultimate result in another way, the collation must always remain appreciably less than the full meal, of which an appreciable amount is about one-half. For these reasons this opinion represents what is aptly termed today the Relative Norm of fast.

Before passing to the third and last opinion outlined by Reiffenstuel, it is useful to note here another view propounded during the seventeenth century by Castro-Palao (+1633) and Leander (+1667). It is, in at least a restricted sense, a combination of an Absolute and a Relative Norm. These writers proposed an eight ounce quantity for everyone with some additional amount in view of the requirements of personal circumstances and climate, following in this respect the considerations mentioned above in the second opinion. In fact, it may be difficult to point out precisely how this view differs as to its result from the second opinion. It concedes to everyone an amount of eight ounces. It seems, however, that on

[5] "Quodsi regulam quandam generalem etiam circa hoc petas, respondet Reginaldus lib. 4. n. 185. et post eum Layman lib. 4. tr. 8. c. 1. n. 9. ordinarie loquendo, et nisi aliqua causa iusta excuset v.g. laboris, infirmitatis etc. non esse notabiliter excedendam quartam partem eorum, quae jejunanti spectata sua complexione sufficerent ad ordinariam coenam: alioquin enim quis semicoenaret."—*Ibid.*, n. 27.

the whole the purely relative approach to the problem, represented by the second opinion, is more liberal. It is, moreover, a natural routine to the solution of the problem, because it is one which is amenable and responsive and as such flexible to the reasonable, variant requirements of individuals, within the pale of the fasting observance. This last consideration appropriately introduces the third and last view developed in the seventeenth century in regard to this matter.

The third opinion recorded by Reiffenstuel does not in first instance offer a rule endeavoring to predetermine the amount of the collation. One of its principal proponents was Bonacina (+1631). This doctrine asserts simply and briefly that the rule of quantity actually permissible is that which has been established by the received custom which obtains in the various localities, because the collation is the creature of custom. At all events, however, the amount of food may not be such as even to approach a full meal.[6] Briefly, approved local custom is controlling. The doctrine considered in its entirety expresses substantially and for all practical purposes the rule of the collation found in canon 1251 of the present *Code of Canon Law*. This view directs its attention to a general, though definitely clear expression as to an amount lawfully admissible at the collation. In this regard it seems to approach, or even to coincide with, at least in some respects, the practical results of the second opinion presented above. In other words, the doctrine gives due consideration and ample latitude in regard to the *material* element (the amount of food) admissible in the practice of the minor repast. Its special contribution to the problem, however, consists in the emphasis which it places upon the necessity of ecclesiastical approval of a given local practice, in order that the latter may become the received custom under law. That is to say, the third opinion stresses the *juridic* element demanded in the practice of the minor meal. Taken as a whole, therefore, its doctrine discloses, and in effect, analyzes the two required component parts which constitute the genesis of the approved usage of the collation.

[6] "Alii vero, ut Bonacina punct. 3. de Jejunio n. 2. citans Toletum, et alios, asserunt, hanc regulam esse desumendam ex consuetudine in singulis regionibus recepta: nam refectiuncula ista est per consuetudinem introducta; ergo sumi potest juxta limites receptae consuetudinis. Cavendum tamen, ne tanta cibi quantitas sumatur, ob quam Collatio transeat in coenam, vel quasi coenam."—*Ibid.*, n. 28.

The first is the admissible amount, the factual, or material element; this is furnished by the people of a given locality. The second is the authoritative approval, the juridic element; this proceeds from the duly constituted ecclesiastical authority in that locality.

With this introductory review of the doctrines of the seventeenth century concerning the collation as a basis, it is now in order to proceed to an investigation of especially those of the eighteenth and nineteenth centuries in regard to what is today called the Relative Norm of fast. The significance and implications of this norm, embodied in the second opinion described in the foregoing, Reiffenstuel designated, it will be recalled, as pertaining to the more probable, hence the more acceptable, opinions on the present question. To curtail useless repetition, a minute description of the considerations constituting the relative approach and its establishment will hereafter be dispensed with, except where necessary to indicate how it was received or to note a change, if any. They have been presented in the text and the annotations in the previous portion of this article. Rather, the present study will confine itself to tracing the progress and recognition which the Relative Norm achieved in the succeeding centuries.

Wigandt (c. 1700), as the title page of his work explains, was a probabiliorist, a defender of the more probable view. By implication he seems to have discounted completely the practicability of maintaining a numerically uniform quantity of food at the collation, which is to be measured entirely by the custom of pious and religious persons in regard to quality and quantity of food. For he asserted without qualification that a single, universal rule can not be established in this matter, because of the diverse constitutions of individuals, which respectively demand more or less.[7] Hence, as a matter of necessity, the quantity must, according to prudent discretion, be accommodated to the requirements of climate and of personal and occupational circumstances of the individual;[8]

[7] "Ratio 2. p. Quia diversae sunt hominum complexiones, ita ut, quod uni est parum, alteri sit multum, et e contra. Ergo non potest in praesenti una certa statui Regula."—*Tribunal Confessariorum et Ordinandorum* (Venetiis, 1717), Tractatus V, Examen IV, Quaero V, XCIX, Resp. 1.

[8] "De caetero una pro omnibus Regula statui non potest, sed est habenda ratio tum Regionum, quarum aliae sunt frigidiores, aliae calidiores; tum personarum, quarum aliae sunt magis abstemiae, aliae magis edaces; aliae robusti-

not the individual in his particular circumstances to the quantity. Such circumstances provide a just basis for an appreciable excess beyond the fourth part of the full meal, but without which there is a serious transgression of the observance of the fast.[9] It thus appears that Wigandt was manifestly committed to the principles of the Relative Norm.

That the relative approach to the question of the quantity of the collation obtained a position among the more probable views is amply confirmed by Sporer (+1714). This author noted that by custom and common opinion the collation was taken unconditionally for the purpose of nourishment.[10] He expended considerable detail in propounding and defending as a fundamental principle and as such more accurate and unquestionably correct the doctrine that one amount predetermined according to weight and measure can not be imposed upon all. Rather, he maintained, the quantity is variable for different persons in respect to age, station in life, occupation, and climate.[11] In this vein he argued strongly to the effect that indubitably a person in advanced years has need of and may take more than a youth, as may even an individual of superior status in society, inasmuch as he is accustomed to more and more select food, than may a man of the people.[12] Similarly, a person

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ores, aliae teneriores; aliae otiosae, vel saltem gravi labori non deditae, aliae diurnis, aut nocturnis occupationibus gravatae; ut proinde necesse sit, pro quovis in individuo quantitatem decerni prudenti iudicio."—*Ibid.*, Resp. 4.

9 " Probabilius est, quod ille (nisi ex alia iusta causa excusetur) faciat mortalem excessum nocturnae refectiunculae, qui notabiliter excedit quartam partem illius quantitatis, quae sufficit ad integram coenam. Ratio: quia moraliter talis excessus censetur esse gravis."—*Ibid.*, Resp. 5.

10 *Theologia Moralis* (Salisburgi, 1711), Tomus Primus, Appendix ad III Praeceptum Decal., Sectio II, §1. *Licita est collatio, etc.* n. 25. (Hereafter cited: *Theol. Moral.*)

11 " Alii rectius docent, non posse unam generalem pro omnibus quantitatem secundum pondus et mensuram determinari, sed variam esse posse pro varietate personarum et aetatis, educationis, occupationis; item regionis calidioris vel frigidioris, et sane verissimum est; . . . "—*Ibid.*, n. 26.

12 It is worth noting this interesting concession, which appears to be a matter of tradition, since it also appears in other similar treatises. The author asserts: ". . . sine dubio enim plus indiget et sumere potest homo provectae aetatis, quam puer; homo nobilis pluribus et delicatioribus assuetus, quam vulgaris; . . . "—*loc. cit.*

engaged in various occupations or tasks requires and is entitled to more than is one who is unemployed; as is also one living in colder climates, than one in clement regions, such as those of Italy and Spain.[13] It is evident that Sporer considered the relative approach as the only reasonable solution, at least for his general locality. He expressly welcomed in particular the traditional opinion (*placet Sententia*) of Filliucius (+1622), Reginaldus (+1623), and Laymann (+1625) permitting lawfully and without scruple the fourth portion of the individual's complete repast, which he is accustomed to take according to his personal and local circumstances, as furnishing to some extent a correct rule for all (*ut aliqualis recta regula assignetur pro omnibus*).[14] Sporer asserted this rule to be clear, universal, and readily applicable to the status and condition of the individual, and as represented by the received opinion of the moralists in Germany. At the same time he noticed other authors who eschewed this view as too lax, improbable, and legally insecure in practice. Sporer argued, however, that this difference in opinion was attributable to disparity of climate and quality of available food and drink.[15] And he urged the view propounded by himself as probable and legitimately safe. Accordingly, he concluded that an infraction of the fasting observance is committed only by an appreciable excess of the fourth part of the complete repast, unless some cause or reason, permanent or transient, instant or in immediate prospect, such as physical debility or some serious occupation is present, which will avail to excuse such notable excess, not ex-

[13] *Loc. cit.*

[14] *Loc. cit.*

[15] "Est haec regula plana et universalis, ut cuivis hominum statui et conditioni facillime applicetur, estque haec recepta opinio DD. in Germania: quamvis Authores citt. Diana, Turrianus, et alii nimis laxam, improbabilem et minus tutam in praxi proclament. Mittant illi Germanis tempore jejunii suum calidum caelum, cibum, et vina pinguia, fructus et confecta, etc. et jejunabimus cum ipsis."—*Loc. cit.* Diana (+1663) was an Italian; Turrianus (+1635), a Spaniard. Among other authors who would not agree with the position of Sporer would be Fagundez (+1645), a Portuguese, *Tract. in Quinque Ecclesiae Praecepta*, Tract. in Quartum Eccl. Praecept., Lib. 1, cap. 4, num. 13 et 19; and certainly Escobar (+1669), a Spaniard, *Liber Theologiae Moralis*, Prim. Tract., Examen XIII, cap. I, n. 6; cap. III, n. 61.

cluding on proper occasion even half the amount of the full meal.[16] The text of Sporer thus discloses an incisive analysis of the function, or application, of the relative approach. In particular, it may be observed that it reflects clearly what may be designated as the double aspect of the Relative Norm, inasmuch namely, as the amount of the minor repast is to be understood as relative both in respect to the full meal and in regard to personal and local circumstances of the individual.

LaCroix (+1714), a contemporary of Sporer, citing the latter and other authors, agreed with him and with the traditional view on the relative approach as being more probable (*probabilius*), to the effect that about the fourth part of the complete repast is permissible to all. In particular he pointed out likewise, evidently admitting also the generality of cases incident to variant personal and local circumstances, as described heretofore, that more is allowed to those who are constantly engaged in occupations which tax the mind and result in appreciable mental fatigue.[17] Hence, mental, not only manual, labor has a claim to recognition.

As in the instance of other authors on this subject, the doctrine of LaCroix refrains from stating directly in terms of weight and measure how much more than the fourth portion is admissible. It may correctly be stated in reply, that absence of numerical pre-

[16] " Itaque in hac nostra probabili et tuta sententia tunc demum in caenula nocturna excedi, et jejunium frangi censebitur, quando id, quod sumitur, notabiliter excedit quartam partem eius quantitatis, quae ad integram caenam sufficeret, seu ultra mediam libram, nisi et hoc aliqua causa excuset a peccato, uti est corporis teneritudo, assuefactio etc. qua ratione personis nobilioribus plus permitti potest. Item occupatio diurna: qua ratione assiduo studio occupatis plus permittitur. Item occupatio futura nocturna: qua ratione in Vigilia Nativitatis Domini permissa est collatio duplo maior propter Officium nocturnum, cui fideles interesse solent: uti observat Filliuc. cit. Turrianus, et alii cum Diana part. 5. tract. 5. resol. 12. Eadem est ratio de aliis similibus casibus."—*Ibid.*, n. 28. It may be noted here that the case of the vigil of Christmas is commonly noticed by authors in regard to the present question. Some writers also discuss the matter in relation to the vigil of Easter and Pentecost, as may also be seen in the text of St. Alphonsus, *Theol. Moral.* (ed. Heilig, Mechliniae, 1852), Lib. 4, Tract. 6, Cap. 3, n. 1025. The solution of the entire question rests with custom, of course, as is apparent from the treatise of St. Alphonsus. To the same effect, cf. La Croix, *Theologia Moralis* (Ravennae, 1761), Tomus Primus, Lib. III, Pars II, n. 1301, and authorities there cited. (Hereafter cited: *Theol. Moral.*)

[17] ". . . plus permitti illis qui continuo dediti sunt studiis, aliisque negotiis fatigantibus caput, quia spiritus in eis magis deficiunt."—*Ibid.*, n. 1299.

cision is an inherent and distinctive feature of the relative approach, and one which is consistent with its entire doctrine. Accordingly, it is proper to assert at this point, as LaCroix indicated, that the relative margin of amount in question is determined by the conscientious observance reflected in local custom,[18] approved, of course, by ecclesiastical authority. Ultimately, therefore, the correct application in the case of an individual of the doctrine of the Relative Norm in practice, especially in view of permissible quantitative variations, rests upon the dictates of an upright conscience as a fundamental principle, which necessarily demands religious prudence and good faith. Among the few examples which the text of LaCroix furnishes, the following seems to bear out this conclusion: For anyone to add thereto less than half of his collation is not a serious breach of his obligation.[19] Hence, it follows from what has been stated that, if there is justification for doing so, an added half of the collation is permissible.

The comparatively brief treatise of Babenstuber (+1726) amply supports the latter inference. This author clearly maintained the relative approach. He considered as an appreciable excess to be an amount more than double that of the collation permissible to the individual, and as such, a transgression of the fasting observance, unless either custom on occasion or other reasonable cause prevailed as an excuse.[20]

[18] "Collatio vespertina est per consuetudinem introducta, et quod ad quantitatem, qualitatem et tempus consuetudo timoratorum hominum sequenda in unaquaque patria, ita cum aliis Castr. t. 30. d. 3. p. 2. §2. n. 5."—*Ibid.*, n. 1297. The same thought is expressed by Sporer, *Theol. Moral.*, Tom. Prim., Append. ad III Praecept. Decal., Sect. II, §1, n. 25, *in fine*.

[19] "Addit Sporer tertiam partem collationis adhuc esse materiam levem, adeoque si extra tempus non sumatur usque ad dimidium collationis, non fore mortale, quia talis quantitas videtur parva, et in se et in ordine tam ad totum diem, quam ad finem ieiunii; . . ."—*Ibid.*, n. 1300. N.B. The writer finds no confirmation in Sporer's text.

[20] "In hac igitur nostra, tutaque sententia, si in coena ordinarie soleas comedere libram v.g. in collatione licite sumis quadrantem librae, ita ut tum denique censearis frangere Jejunium, quando id, quod sumis, notabiliter excedit quadrantem librae, ut, si sumas ultra mediam libram. Excipe, nisi hoc ipsum vel consuetudo, vel alia causa rationabilis excuset a peccato. Ita in vigilia Nativitatis Domini permittitur collatio duplo major, idque ex recepta consuetudine, et propter Officium nocturnum, cui omnes fideles interesse solent. Reding. ubi supra n. 18. Sporer n. 28 et alii."—*Ethica Supernaturalis* (Augustae Vindelicorum, 1718), Tractatus VI, De Praeceptis Ecclesiae, Disputatio I, Arcticulus I, n. 15.

What may be termed collective opposition to the Relative Norm was offered by the School of Salamanca (*Salmanticenses*), for the reason that the rule which its doctrines presented was deemed too indefinite and amenable both to scrupulosity and laxity.[21] But it may be noted that the School, in expressing its disapproval, acknowledged the fact that the nutritional requirements among various individuals are fundamentally different, that is, in respect to taking one's full meal, and hence in regard to nutrition in general. However, the representatives of the School of Salamanca did not proceed from this factual premise to the practical conclusion that the same factual principle of daily experience should reasonably be applicable proportionately to the minor repast. Indeed, one may not find fault with their mere refusal to arrive, as it were by a process of inexorable logic, at this conclusion. Legislation is not a process essentially characterized by the adherence to a closed system of compelling, abstract logic. It seems, moreover, as their text shows, that the School did not completely discountenance the relative approach beyond the pale of probability. The School of Salamanca asserted as the more probable, and hence more acceptable, and the more common view, supported by the common practice of conscientious subjects of the law, both lay and religious, that a pre-determined quantity of eight ounces of food could be taken by all as nutrition at the collation.[22] An excess of one or two ounces was in any

[21] "Sed haec regula obscura valde est, et scrupulis, et relaxationibus exposita; cum pro unica refectione diversa quantitas iuxta diversas hominum complexiones sit necessaria, plus enim indigent robustiores, quam debiles; plus edaces, quam abstemii."—*Collegii Salmanticensis Cursus Theologiae Moralis,* Tomus Quintus (Venetiis, 1728), Tractatus XXIII, Caput II, Punctum III, §III. *De collatiuncula serotina, seu coenula.* n. 71.

[22] "Sed probabilior, magisque iam communis sententia docet; posse pro collatione sumi octo unciarum quantitatem. . . . quia sic tenet communis fidelium, et timoratorum praxis, necnon Sacrarum Religionum, ut de Societatis Jesu familia ex doctrina Suarez [+1617, Spaniard] testatur Fagundez [+1645, Portuguese]; et in nostra Discalceatorem [Discalceatorum?] Carmelitarum reformatione iam consuetudo obtinuit. Sic expresse tenent etiam Villalobos [+1630, Spaniard] tract. 23. diffic. 7. num. 4. Ledesma [Barth.? +1604, Spaniard] 2. p. tract. 27. conclusion. 4. difficult. 1. num. 4. Joannes Sanchez [+c. 1620, Spaniard] in Select. disp. 52. num. 7. Turrianus [+1635, Spaniard] in Summ. 1. part. cap. 256, dub. 38. conclus. 1. Palaus [+1633, Spaniard] tom. 7. tract. 1. disp. 3. §2. numer. 7. Diana [+1663, Italian] 1 part. tract. 9. resol. 1. Trullench. [+1633, Spaniard] lib. 3. in Decalog. cap. 2. dub. 3. num. 9. Pasqualigus [+1664, Ital-

case not considered appreciable (*notabilis*) and, therefore, not a serious transgression, and was even permissible, provided that such amount were required to overcome weakness or to induce sleep.[23] It would appear that this doctrine established the Absolute Norm of eight ounces of food pre-determined for the minor repast.

It may be observed that, besides the teaching of the School of Salamanca as such, an ample majority of individual Spanish authors is cited in support of this view, ranging practically through a period of a century. It would seem, therefore, that the Absolute Norm as a doctrine had its inception and confirmation at these sources.

The question may fairly be asked at this point, notably in view of the universally acknowledged fact that the collation as such together with the other variant, material incidents drawn into the scope of its actual practice, as already indicated, is a product of local custom, whether the School of Salamanca may be thought to have intended to utter its teaching as preferably applicable also for the entire rest of the world—not to speak of its extension into indefinite future time—so that it should supersede any other view and practice. The writer believes that such was not the intention or purpose of the School. But rather, that it was propounding a doctrine at least presently applied in Spain, and likewise applicable perhaps to Portugal and Italy. This conclusion finds direct support in the text of Sporer, quoted in the foregoing. In other words, the teaching of the School sought to achieve two distinct objectives. First, it endeavored to establish and purposed to declare as more probable certainly for Spain the opinion which pre-determined an eight ounce collation. Secondly, it bore witness to the fact that

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ian] Tract. de Jejun. decis. 91. n. 4. Leander [+1667, French] tractat. 5. disputat. 4. quaest. 13. nec dissentit Thomas Sanchez [+1610, Spaniard] dub. 25. citat. numer. 3."—*Ibid.*, n. 72. N.B. It seems to the writer that the teachings of Castro-Palao and of Leander, considered in their entirety, do not sustain the view in behalf of which they are here cited. Cf. previous part of this article, where their views are explained.

[23] "Unde qui excederet per unam, aut duas uncias quantitatem a nobis praefixam, maxime si eo die aliam materiam parvam non sumpsit, aut ob debilitatem, vel sonum [*somnum?*] capiendum indiget dicto excessu, non franget jejunium; cum hic excessus non sit notabilis quantitas. Sanchez sequitur alter Sanchez num. 7. Pasqualigus decis. 105. num. 2. Leander q. 14. et alii."—*Loc. cit.*

such was the practice in Spain and perhaps also in the other lands mentioned.

But even if it be supposed that the School's doctrine were intended as imposing the pre-determined Absolute Norm as more probable for the rest of the world, it is clear that this position neither dislodged the Relative Norm, which had been established as solidly probable and safe in practice for a century; nor created an accepted custom elsewhere in conformity with its own norm. The former proposition is sustained by the texts considered heretofore. As to the latter proposition, it is obvious that a doctrine does not by itself create and impose an accepted custom; the element of custom itself derives from the practice of the people, not immediately from a doctrine. Moreover, from what has been considered previously, it is highly questionable whether the School of Salamanca either intended to bear witness or could be accepted as testifying effectively and conclusively as to the actual, general existence of its rule in local practice elsewhere than in the countries mentioned.

Indeed, the text of Sporer directly indicates that the practice in the North was not the same as that in the Latin countries; nor can the other proponents of the relative approach be thought merely to have espoused a norm which had or could have no immediate practical application. The divergence of practice does not permit the conclusion that one was correct and the other wrong; much less that the mere difference of teaching in one locality entitled it directly to suppress the doctrine and legitimate practice in another. Each in its locality could well be within the pale of legitimate local custom. That one general locality should prevail to impose its doctrine and practice on another simply because of difference and for the sake of uniformity was and still is entirely uncalled for under the law of accepted custom. The discrepancy in doctrine and practice may simply and validly be explained in the present instance therein, that the Latin countries to the South saw no necessity in a collation greater than a uniform eight ounces, whereas the peoples to the North believed that an amount variable according to the needs of the individual was reasonably warranted. In other words, there is no evidence that the teaching of the School of Salamanca was to be understood as of itself changing in doctrine and practice the face of the fasting observance the world over. It was itself the expression of the doctrine and practice of its general locality. The same considerations are correct and applicable under canon 1251 of

The Code of Canon Law, which, as previously stated, is amenable to either the Relative or the Absolute Norm in any given locality.

That the School of Salamanca did not determine the present question upon a universal scale is clear from the doctrine of Schmalzgrueber (1663–1735). He lived throughout an era during which the present subject received careful and complete examination and consideration by the eminent scholars of their day, as his text also discloses. His own conclusion was that the result of the various views of the authorities concerning the problem was ultimately reducible to two different basic opinions. There were those who limited the collation to a determined quantity. The other opinion was represented by those who did not pre-establish a fixed amount, but who maintained that the quantity must be allowed to have a variable latitude incident to the personal and local circumstances of the individual, and above all compatible with the custom reflected in the practice of good and upright members of the community.[24] Schmalzgrueber's doctrine introduced nothing fundamentally new. It did, however, bring the opposing views into juxtaposition as reduced to their simple, fundamental principles, the one consisting in a pre-determined, purely objective, and absolute quantity for all; the other, in a rule of quantity to be determined by the individual conscience and in keeping with the law of fast. The latter rule, which yields a variant quantitative result for individuals in respectively different circumstances, Schmalzgrueber considered probable and safely applicable in practice on the basis of accepted custom, as his text indicates. His text, moreover, furnishes a clear and convincing explanation of the derivation of the relative approach as such, its reasonableness, and hence its legal compatibility with the fasting observance. Thus the amount of the collation is considered contingent upon the individual's usual, full repast, complete according to the just requirements of his physical

[24] "Dub. I. quantum cibi sumere in collatiuncula ista liceat? Resp. varias circa hoc esse DD. sententias; maxime autem dividi bifariam possunt: nam aliqui certam assignant, alii nullam certam assignant quntitatem. Ex iis, qui nullam certam quantitatem collatunculae vespertinae assignant, omnes fere in hoc conveniunt eam mensurandam esse juxta personarum, et regionum qualitatem, occupationes jejunantium, vires corporis, et maxime consuetudinem, quae apud homines bonos, et timoratae conscientiae communiter viget."—*Ius Ecclesiasticum Universum* (Romae, 1844), Tom. III, Pars V, tit. XLVI, n. 24. (Hereafter cited: *Ius Eccl. Univ.*)

constitution, and of local and other incidental circumstances. Since for these reasons the amount of such full repast is not the same, but fluctuates in respect to different persons, for the same reasons the collation also results in a variant amount. Obviously, the doctrine of Schmalzgrueber—as does the relative approach generally—postulates, as a matter of fact, the presence of the same variant, personal nutritional requirements also in regard to the minor repast,[25] which determine its quantum independently of the necessity of an objective, absolute standard.

This result of Schmalzgrueber's reasoning is borne out and corroborated on a like basis independently of him by Giribaldi (c. 1750). This author considered the present problem in sufficient detail in the light of the traditional doctrines to warrant notice of his view as an opinion of importance. His text gives precise recognition to the juridic element, the requisite approval of ecclesiastical authority, which is basically essential to the collation as an actually established and accepted usage for the express purpose of nutrition.[26] Giribaldi, after reviewing the opinions in regard to fixed numerical quantities, designated as a very reasonable opinion (*quae quidem opinio est valde rationabilis*) the view of those who supported a relative approach, provided that the collation does not approximate a full meal.[27]

[25] Citing Filliucius, Reginaldus, Laymann, Busenbaum, Sporer, and others, Schmalzgrueber asserts: ". . . pro regula quantitatis in collatiuncula vespertina adhibendae assignant quartam, aut quintam partem consuetae comestionis: quam sententiam judico practice probabilem esse, et propterea quemvis eandem sequi secure posse. Comestio autem illa hic sumi debet, quae justa est, seu qua quis, considerata corporis sui, et regionis ac aliarum rerum constitutione indiget: et hinc sequitur, cum cibi quantitas in coena non sit omnibus eadem, sed aliqui majore opus habeant, alii minore, ob eam causam etiam quantitatem collatiunculae pro diversitate hominum diversam esse."—*Ibid.*, n. 26.

[26] ". . . refectiunculam, quam collationem vocant, quae quidem, licet olim introducta fuerit ratione medicinae ad capiendum somnum, vel ne potus noceret, vel ob aliam indigentiam naturae, hodie tamen sumitur etiam ad nutriendum, et sustentandum corpus, ut constat ex consuetudine legitime introducta, tolerata, et approbata ab omnibus Praelatis Ecclesiae."—*Opera Moralia* (Bononiae, 1762), Tomus Quartus, Tractatus VIII, Caput III, Dubium VIII, n. 65.

[27] *Ibid.*, nn. 68–69.

Elbel (+1756), maintaining a similar position, likewise reviewed briefly the opinions seeking to pre-determine various numerical measurements for the collation up to the amount of eight ounces.[28] He rejected the proposition of a universally applicable eight ounce norm, and proposed as more probable and secure in practice a proportionate quantity equal to the fourth part of the usual full meal which a given individual takes in view of the demands of his personal and local circumstances. Elbel reached his conclusion by means of the following reasoning. One can not pre-ordain by means of a universal rule in respect to all a cause exempting from the obligation of the fast, because the constitutions of individuals in general are different. For the same reason it appears as more probable that an eight ounce collation can not appositely be established as a universal rule of quantity for all.[29] The author bases his view upon the doctrines of cited traditional authorities.

The discussion of the subject by Billuart (+1757) affords an incisive appraisal of the pertinent doctrines together with a forthright recognition upon a universal scale of the practical aspects of fact involved, and hence is worthy of consideration in some detail. The text of this author professes acquaintance with a considerable range of authorities, asserting that the views on the question are widely disparate,[30] though no citations are presented. Billuart set aside as unfounded and arbitrary the views pre-empting a numerical quantity for the collation, for the apparent reason that he refused to

[28] *Theologia Moralis Decalogalis* (Augustae Vindel., 1738), Pars III, Conferentia XVII, nn. 479–480.

[29] "Verum quemadmodum complexiones hominum universim non sunt aequales, proptereaque secundum dicta n. 469. respectu omnium statui nequit regula universalis a jejunio excusans, v.g. ratione itineris aut laboris: ita pariter probabilius mihi videtur, 8 uncias pro collatiuncula velut universalem quantitatis regulam respectu omnium convenienter statui non posse. Unde R. 2. Ad determinandam quantitatem ciborum pro refectiuncula sumendorum convenientissime statuitur sequens regula: In collatione vespertina tuta conscientia regulariter sumi potest ¼ coenae ordinariae, quam quivis spectatis circumstantiis suae personae, aetatis, conditionis, occupationis, regionis, in qua degit, sumere solet."—*Ibid.*, nn. 480–481.

[30] "II. Sed circa quantitatem et qualitatem ciborum sumendorum in hac coenula, tanta est sententiarum varietas, ut vix duos sibi consentientes reperias, et fere tot sint sententiae quot capita."—*Theologia Moralis* (Paris-Lugduni, 1874), Tomus VIII, Tractatus De Temperantia . . . , Dissertatio II. De Abstinentia, Jejunio et Gula, Articulus V, §IV, De coenula seu collatione.

accept the proposition that what is sufficient for one is sufficient for all indiscriminately.[31] The resistance to this proposition is traditionally as a matter of historical fact the substratum of the relative approach; but the foundation of Billuart's view in this respect expressly derives from a doctrine of St. Thomas, as will be explained subsequently. The views propounding uniform, mathematical quantities seemed to Billuart to be an impractical over-simplification, and to be unresponsive to the reality of pertinent facts which require sympathetic and effectual consideration. Accordingly, he refused to accept on their face value, as it were, and as sufficiently correct for all practical purposes the doctrines which maintained a Relative Norm consisting merely in an assignment of a fractional part of the individual's full meal. Billuart specially emphasized a more exacting conformity with the requirements of the individual.[32] This feature constitutes the positive aspect of his doctrine. While it is not in substance new or unique in the tradition of the relative approach, the clarity of its presentation and the convincing argumentation involved arrest attention and are worthy of particular notice.

Thus, two matters are to be regarded which must govern the quantity of the collation in practice. The first is the custom of the respective locality as received among its law-abiding population. Usage varies as between different places; in colder localities a more generous amount is customary than in warmer climates. In this respect the text of Billuart attests that, as a matter of fact, in his locality (Belgium, and perhaps also the Low Countries and northern France generally) it was in common practice to take for the collation the fourth or third part of the ordinary full meal.[33] The

[31] "IV. Circa quantitatem non minus dissentiunt auctores, dum alii ad unam panis unciam cum dimidia restringunt, alii ad duas, alii ad tres, quatuor, quinque, sex extendunt: quasi . . . quod sufficit uni omnibus sufficiat. Relictis ergo his opinionibus ut infundatis et arbitrariis . . ."—*Loc. cit.*

[32] "Alii assignant pro quantitate collationis leve aut semiplenum jentaculum, alii quartam, alii quintam, alii sextam partem ordinariae refectionis; sed hae sententiae videntur etiam arbitrariae, et nisi aliquid addatur, patiuntur easdem instantias ac prior."—*Loc. cit.*

[33] "Itaque, salvo meliori judicio, duo sunt attendenda, juxta quae regi debet quantitas collationis. Primum est consuetudo cujusvis regionis inter timoratos recepta; non enim est una in omnibus. Sic in frigidioribus regionibus plus concedi solet quam in calidioribus; in his partibus satis communiter assumitur pro coenula quod aequivalet mediocri jentaculo, aut quartae tertiaeve parti refectionis ordinariae."—*Loc. cit.*

actual, local custom is the first determinant of the minor repast; it may be designated as the general and objective criterion of the respective region. This amount is available to all there, inasmuch as the fasting observance is concerned, by virtue of its custom. But it is not necessarily the sole determinant in any given case. For a second item to be taken into account is the condition of the person in question; this consideration may be termed the special and, in a sense, subjective criterion, though it must none the less be founded in fact. Thus, more must be allowed to a person of advanced years or of weak constitution than to a youth or to one who enjoys vigorous health; more to one who is pressed by hunger than to one who is less subject to the demands for food. Billuart vindicated his position in this respect as an evident postulate of reason derived by analogy from the principle enunciated by St. Thomas Aquinas in regard to the necessarily variable quantity of the full meal. Namely, just as, Billuart argued, the quantity of the complete repast can not be uniformly determined for all because of variant physical complexions, by reason of which the one requires more, the other less food (thus, St. Thomas), for the same reason, Billuart concluded, the collation ought not to be assessed according to a uniform standard for all, since the latter is also employed in response to the demands of nature.[34]

[34] "2° Inspicienda est conditio personae jejunantis; plus enim concedi debet seni seu debili quam adolescenti aut robusto, plus voraci quam fame carenti; idque ratio suadere videtur.—Q. 147. a. 6. ad 1. Sicut enim, juxta S. Th. *Quantitas cibi non oportuit eadem omnibus taxari* in refectione *propter diversas hominum complexiones, ex quibus contingit unus majori alter minori cibo indiget:* ita nec oportuit eadem omnibus taxari in refectiuncula, quae permittitur etiam ad indigentiam naturae aliqualiter sublevandam. Dicimus itaque quod ex primo capite quisque potest sumere in collatione tantum quantum sumi communiter solet in sua patria, eodem semper principio quod collatio a consuetudine vim habeat. Ex secundo capite, potest plus sumere etiam quam sumi soleat communiter, qui plus indiget. . . . licet ex secundo capite collatio sit respectiva, ex primo tamen capite est absoluta, ita ut quisque consuetudine permittente possit absolute sumere quantum communiter sumi solet in sua patria, sive indigeat sive non. Unde est tantum respectiva hoc sensu, quod qui plus indiget plus sumere possit quam sumitur communiter, . . . in refectiuncula autem consuetudo taxat in communi et secundum se certam quantitatem, puta, aequivalentem mediocri jentaculo, ultra quam communiter non itur; non prohibet tamen quin per accidens quis possit plus sumere, si nempe plus indigeat."—*Loc. cit.*

It thus follows that the same purpose as in the full meal serves as a pattern for and is executed by the collation on a quantitatively reduced scale. Accordingly, there exists between the full meal and the minor repast an inherent quantitative relation which is based on the natural nutritional exigencies of the individual. In the doctrine of Billuart, as his text just quoted indicates, the special, incidental allowance in favor of persons who require more than what is normally taken at the usual collation is a consideration which is understood as included in and forms part and parcel of the local customary fasting observance at the minor repast; it exemplifies a flexible feature of the Relative Norm. This result derives from and is justified, if at all, upon the fundamental premise, acknowledged by all and expressly asserted by Billuart, that custom is the sole source and norm of the collation,[35] which in any event may never attain to an amount equivalent to that of the full meal.[36] This prohibitive quantity is realized, in the opinion of the present author, by an amount equal to that of another collation, and which is, therefore fatal to the observance of the fast.[37] It is obvious that the excessive quantity is to be ascertained on a relative basis, that is, in accord with the postulates of the Relative Norm. With this consideration the doctrine of Billuart is concluded. The doctrine merits attention for the conviction which it furnishes in support of the Relative Norm, especially by the clear adaptation to the minor repast of the principle recognized by St. Thomas as governing the variable full meal.

At this point the work of Ferraris (+c. 1763), because of its encyclopedic character, serves to control the accuracy of this study. After mentioning summarily the views which confine the minor meal within numerical estimates up to eight ounces, the text of Ferraris asserts that it is more correct to abandon (*Alii rectius docent*) the attempt to formulate a general, numerically uniform

[35] ". . . cum collatio ortum habeat a consuetudine, etiam consuetudine modus ejus regi debet."—*Ibid.*, III.

[36] " Caeterum id unum omnibus et semper est observandum, ut sic attemperetur coenula quod non vertatur in coenam."—*Ibid.*, IV.

[37] " *Petes* 1° quantus excessus requiritur in collatione ad peccatum mortale? R. meo sensu talem requiri qui seorsim sumptus sufficeret ad alteram collationem: sicut dixi supra, talem quantitatem sufficere ad fractionem mortalem jejunii."—*Loc. cit.*

measure for the evening meal, since it is certain (*Et quidem verissimum est*) that the quantity is variable in view of personal and local incidents,[38] as explained heretofore. And accordingly in this context the traditional endeavor to define some general, relatively applicable rule is presented in the usual terms of the fourth or fifth part of one's ordinary chief repast taken incident to the requirements of his concrete, personal circumstances.[39] In other words, since the chief repast is variable from person to person, the collation is likewise variable. As just noted, this conclusion was expressly demonstrated by Billuart. It thus appears that Ferraris carried forward the Relative Norm as traditionally taught, with a manner of presentation, however, which serves likewise, as is especially so in the text of Billuart, to indicate the inherent relation between the quantum of the minor and of the full meal by bringing their variable aspects into juxtaposition through concrete reference to the demands of the individual case.

In view of the previous considerations it may be stated with entire confidence that the third, fourth, or fifth portion of a given individual's complete repast subject to the requirements of his present circumstances represents a gross estimate of the collation. More particularly, in view of the entire traditional doctrine concerning the relative approach and especially in the light of Billuart's treatment of the question, the thought clearly emerges that the collation of the individual may itself be augmented on occasion and from time to time in dependence upon his actual needs.

The investigations into the principles and doctrines of the eighteenth century concerning the Relative Norm are herewith concluded with the exception of an examination into the complete doctrine of St. Alphonsus (+1787). The writer is convinced that its omission

[38] *Prompta Bibliotheca Canonica, Juridica, Moralis, Theologica* . . . , IV (Lutetiae Parisiorum), *s.v.* "Jejunium", Art. I, n. 44.

[39] "Ut autem aliqualis recta regula assignetur pro omnibus, varii dicunt probabilius modicam et licitam, sine scrupulo quantitatem pro collatione seu refectiuncula vespertina censeri quartam vel quintam partem coenae ordinariae, quam quis alias spectata sua persona, aetate, conditione, occupatione, fatigatione, regione, ordinarie ad sufficientiam naturae sumere solet. Regin. tom. II, lib. IV, num. 185; Layman, loc. cit., n. 9; Busemb., lib. III, part. II, cap. 3, dub. 1; La Croix, ibid., num. 1299; Sporer, loc. cit., num. 26; Filliuc., tract. 2, part. I, cap. 2, quaest. 7, num. 33, dicens ita decisum fuisse in celebri academia theologorum, qui omnes in quartam partem consenserunt."—*Ibid.*, n. 45.

would be a serious failure. In any event, the discussion to follow will at the same time serve as a summation of this period.

St. Alphonsus took cognizance of the traditional doctrine on the relative approach, current since the early part of the seventeenth century, in regard to the amount of the minor meal, observing that Laymann and Bonacina noted its employment by actual custom in certain localities.[40] In particular, his text mentions a series of authorities, most of whom have been quoted in the foregoing, as teaching that by custom the fourth part of the complete repast is permissible.[41] It is deserving of notice that the authors cited were in preponderant majority Germans with two Belgians and a Frenchman, all native to countries lying to the north of Spain and Italy; an exception is Filliucius, who was an Italian. This geographic segregation directly suggests a conclusion which has urged itself upon the writer in view of the immediately previous discussions in the present section of this study; namely, that the Relative Norm met with common acceptance in the countries north of Spain and Italy. This consideration tends undoubtedly to explain and to give strong support to the position of the relative approach, to the effect that, in a colder climate and place in general less congenial to pleasant living conditions, there is a demand for a greater amount of nourishment, as also in particular to the observation of Sporer noted in the foregoing in reply to those who were opposed to the adaptation of the minor repast relative to the condition of the individual.[42]

[40] *Theologia Moralis,* Tomus Secundus (ed. nova, Gaudé, Romae, 1907), Lib. III, Tract. VI, n. 1024.

[41] "Recentiorum autem, quod ad quantitatem pertinet, alii, ut Holzmann [German, +c. 1700], t. 1, p. 338, n. 23, cum Laymann [German, +1625], Filliucio [Italian, +1622], Reginaldo [French, +1623], Sporer [German, +1714], t. 1, p. 293, n. 26, Wigandt [German, +c. 1700], p. 139, resp. 5, Croix [Belgian, +1714], 1.3, p. 2, n. 1299, cum Busenbaum [German, +1668], et Elbel [German, +c. 1760], t. 2, p. 175, n. 481, cum Henno [Belgian, +c. 1700], et aliis, Anacletus [Reiffenstuel? German, +1703], p. 387, n. 27 [this number indicates R.'s text], dicunt ex consuetudine permitti jejunantibus quartam partem coenae."—*Ibid.,* n. 1025. Biographical notes inserted from Lehmkuhl, *Theologia Moralis,* II, 799, sqq.

[42] Thus, Gobat (+1679), a German, had reported in regard to his time the corresponding custom as extant at least in Germany: "Consuetudo permittit, saltem in Germania, practicari doctrinam Filliuccii, Reginaldi, Laymanni in Tract. De Iejunio tradentium, posse libere pro refectiuncula vespertina tantum

But the rule advocating the fourth portion of the full meal did not meet with the approval of St. Alphonsus, who considered it as either too indulgent or at least very obscure and fraught with occasion for scrupulosity.[43] In other terms, according to the judgment of this author, in the employment of the relative approach people are as a rule either lax or scrupulous. It seems to be impossible to determine with certainty whether St. Alphonsus' criticism was intended as applicable universally or only to his general locality of Naples and to places with similar conditions. If intended as an unqualified, general disapproval and censure of the relative rule, it seems to the writer, in view of the indisputable fact that the considerations underlying the Relative Norm had been proposed and approved by moralists of eminent learning and merit for about a century and a half, that the statement of St. Alphonsus is made without sufficient foundation. At all events, he asserted his preference for the view, which he stated was commonly propounded by others, that eight ounces of food is permissible at the collation as the practice of God-fearing people.[44] As may well be observed in

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comedi ex rebus permissis, quantum aequat quartam partem iusti prandii."—*Operum Moralium Tomi I,* Pars II (Duaci, 1700), Tractatus III, Cap. XXVIII, n. 208. This text may be found also in Gury-Ballerini-Palmieri, *Compendium Theologiae Moralis* (12. ed., Prati, 1894), I, n. 497, nota 7. (Hereafter cited: *Compend. Theol. Moral.*) Ballerini-Palmieri likewise stated that especially the German authorities supported the doctrine on the fourth portion of the complete repast.—*Opus Theologicum Morale,* Volumen II (2. ed., Prati, 1892), Tractatus VII, Sect. I, n. 47. (Hereafter cited: *Op. Theol. Moral.*)

[43] "Sed haec regula non multum mihi arridet: nam vel potest esse nimis indulgens, et ideo reprobant eam Salmant. tr. 23, c. 2, punct. 3, §3, n. 71, et Diana p. 1, tr. 9, r. 1, cum aliis, vel saltem est valde obscura, scrupulisque obnoxia." —*Loc. cit.*

[44] "Melius igitur alii communiter asserunt permitti in collatiuncula octo uncias cibi: ita Palaus [Spaniard, +1633], t. 7, tr. 1, d. 3, §2, n. 7, Roncaglia [Italian, +1737], de 3 praec., c. 1, q. 5, r. 1, qui asserit sic ferre hodie praxim timoratorum. Viva [Italian, +c. 1710], eod. tit. q. 10, art. 3, n. 1. Tamburinius [Italian, +1675], Dec. 1.4, c. 5, §3, n. 1. Elbel [German, +c. 1760], t. 2, p. 180, n. 493. Felix Potesta [Italian, +1702], de pr. Eccl. n. 2886, Mazzotta [Italian, +1746], t. 1, p. 428. Diana [Italian, +1663], p. 1, tr. 9. r. 1, qui ait hanc sententiam ab omnibus admittendam, et Salmant. ibid. n. 72, cum Villalobos [Spaniard, +c. 1630], Turriano [Spaniard, +1635], Pasqualigo [Italian, +1664], Ledesma [Spaniard, +1604], Trullench. [Spaniard, +1633], Leandro [Frenchman, +1667], etc., communiter, qui dicunt sic hodie tenere communem piorum

his text, many authors of note are cited in support of this view. Accordingly, St. Alphonsus, in virtue of his pre-eminent authority in the field of Moral Theology, has been accepted as the champion of the Absolute Norm of an eight ounce collation. Thus Kelley observes in discussing the practice of fasting in regard to breakfast and the collation: "Where do the two and eight ounce measures come from? We have received them from the norms laid down by moralists of the absolute standard and mainly from St. Alphonsus in the middle of the eighteenth century." [45] However, the text of St. Alphonsus just quoted requires an analysis which, in turn, seems to call for a number of comments.

Firstly, in contrast to the proponents of the Relative Norm, the authors cited by him, with the exception of three, viz., Elbel, a German, Fagundez, a Portuguese, and Leander, a Frenchman, were in far superior majority Spaniards and Italians. This fact seems very significant. For it confirms the surmise which pressed itself upon the writer during the course of this investigation, that the doctrine underlying the so-called Absolute Norm is indigenous to the Latin countries of Spain and Italy. Thus, upon the evidence of authorities submitted by St. Alphonsus as compared with those presented in the previous discussions it was clearly not *the* common opinion; rather, at best it was the common opinion among Spanish and Italian authors, and which may be accepted as reflecting the actual practice of their localities. But on the other hand, there were, as a matter of fact and for all practical purposes, as many competent and contemporary authorities of the northern countries of Europe who espoused the doctrines of the relative standard. This comparative consideration of the question in its entirety seems amply to corroborate the statement made by Kelley: "But as we have said, from the time of St. Alphonsus the 'two and eight ounces' seems to have remained the same. Although St. Alphonsus approved of this measure, he did not intend to establish a fixed, universal law, and said that it is necessary, above all, to take into

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usum, et sic practicari ab eodem suorum discalceatorum ordine sicut apud ipsos Salmant. testatur Fagund. [Portuguese, +1645] ex Suarez [Spaniard, +1617], de Societate Iesu."—*Loc. cit.* Biographical notes inserted from Lehmkuhl, *loc. cit.*

45 "Safeguarding the Ecclesiastical Law of Fast,"—The Jurist, VIII (1948), 153.

account local custom."[46] The writer believes that this interpretation of the intent of St. Alphonsus is correct in view of the comparison just established in the foregoing. St. Alphonsus could not, to speak properly, establish a law, universal or particular, or a custom, as all will agree. With reference to the latter, it may be stated in passing that authors as such do not create custom. Their writings may well influence, even powerfully, its formation and course and attest to its existence.

It may be noted that Elbel was cited in St. Alphonsus' text previously quoted as supporting the relative approach; this report on his position is entirely correct. But he is again mentioned subsequently as advocating the doctrine of an eight ounce norm. In this latter citation Elbel stated nothing more than that the Church permits an amount of eight ounces in order to allay undue concern and scrupulosity, even though one should experience satiety with this amount. This statement is, of course, a far cry from insinuating that as a rule people are either lax or scrupulous, and from advocating, as a consequence, an eight ounce meal. Moreover, the text of St. Alphonsus cites Palaus (or Castropalao), Tamburinus, Potesta, and Leander in behalf of the eight ounce collation. As shown in the previous pages of this study, the writer submits that their doctrines are not at all completely represented in such an appraisal.

Finally, the doctrine of St. Alphonsus relies in part on the teaching of Diana (+1663), in which the latter is quoted as stating that the eight ounce rule *must* be admitted by all. Diana makes this assertion precisely.[47] Be the doctrine of Diana as it may, for the

[46] The Jurist, VIII (1948), 155, citing Roy, "Les 'onces' du jeûne—norme incomplète"—*Revue Eucharistique du Clergé*, XLII (1939), 38, as citing St. Alphonsus, *Theol. Moral.*, Lib. III, n. 1025. The writer regrets that this article is not available to him. Its title, however, if referable to the doctrine of St. Alphonsus as commonly understood, suggests a proposition with which the writer heartily agrees, as he will endeavor to explain hereinafter.

[47] Cf., especially *Resol. Moral.*, Pars I, Tractatus IX, Resol. I. In *op. cit.*, Tractatus IV, Miscellaneus, Resolutio CXVII, which together with the former place contains a vigorous attack upon the doctrine permitting the fourth portion of the full meal, it is asserted *inter alia*, that such teaching is by authorities in Spain (*a viris doctis Hispaniae*) deemed to be entirely without foundation (*omnino improbabilis*) and rash (*temeraria*); that it is not a safe rule in practice; that the practice of the Spaniards and of other nations is to the contrary: ". . . respondetur assumptum esse manifeste falsum secundum com-

purposes of this investigation the writer can sincerely state that he was unable to discover any evidence of Diana's influence, if any, upon the development of the doctrines establishing the Relative Norm. As a matter of fact, they continue in their vigor for a century after him into the time of St. Alphonsus.

Moreover, to advance categorically the argument that St. Alphonsus taught an eight ounce rule is a failure, in the opinion of the writer, to present his complete doctrine. He quoted Milante (+1749), his former professor,[48] for the proposition that a quantity of eight ounces is *ordinarily* the limit of the collation; however, in virtue of a just cause the collation may be more generous, in the case, namely, in which a person requires more nourishment, a concession which, St. Alphonsus adds, authorities commonly admit.[49]

It must be noted that the quotation from Milante contains, by implication, at least no absolute or predetermined uniform restriction as to the measure of the greater amount thus permitted. Fairness to the presentation of the complete view of St. Alphonsus demands the following inquiry. Does the context of St. Alphonsus subsequent to the quotation from Milante intend to restrict the practical and patently flexible application and effect of its meaning? In the subsequent context, namely, it is asserted by St. Alphonsus in sum and substance, citing among others even Elbel, Sporer, Tamburinus, Leander, and Croix, that no fault can be found with one who, requiring more nourishment, adds two ounces to his eight ounce collation. If this proposition must be understood as a restriction upon the quoted doctrine of Milante, and in consequence

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munem consuetudinem Hispanorum, et eadem refertur apud alias nationes ab his, qui in eis habitarunt." It would be interesting to identify and learn the original and complete content of this testimony from a source other than Spanish or Italian.

[48] Cf. Lehmkuhl, *Theol. Moral.*, II, 811.

[49] "Idem confirmat Pater Milante in prop. Alexandri VII, exerc. 23, p. 258. qui Auctor, licet rigidarum sententiarum fautor sit, tamen non dubitat sic asserere: '*Ut igitur coenula ista innoxia sit, debet esse modica, ita nimirum ut octo unciarum pondus ordinarie haud excedat quantitas illa, quae pro refectione sumitur; ita quidem universim viri qua pietate, qua doctrina pollentes, docent, et ad praxim reducunt. Dixi* ordinarie, *quia justa ex causa poterit esse majoris ponderis et quantitatis, quando videlicet aliquis majori eget nutrimento.*' Quod ultimum etiam communiter DD. admittunt." *Theol. Moral.*, Lib. III, n. 1025. N.B. The writer was unable to obtain the work of Milante.

as uniformly applicable as such to the collation of anyone, then the unqualified latter part of the Milante quotation and even St. Alphonsus' comment about it (*Quod ultimum*) with approval are, in reference to the above noted subsequent context, superfluous, meaningless, and even confusing, since Milante, as quoted by St. Alphonsus, does not confine his liberality to two ounces. And if restrictive, in this event the teaching of St. Alphonsus is, in the opinion of the writer, committed to the doctrine of the Absolute Norm; otherwise not. The writer believes that his text must be allowed its meaning in every part and be considered as such in its entirety, with the result that his doctrine is not committed to that of the Absolute Norm. Rather, it seems that an earnest defender of the Absolute Norm would have much more reason and would experience greater security and comfort in citing Diana than St. Alphonsus.

The writer has no desire of converting the teaching of St. Alphonsus to the benefit of the doctrine of the relative standard; the latter has stood ably proposed and defended long before him—and so remained long thereafter. Yet the quotation from Milante does indicate that St. Alphonsus did not intend his eight ounce norm as absolute in practical application. Also, the admission that one may partake of more food when necessary would clearly condemn, according to his view, even his own rule to at least some indefiniteness, and likewise, to occasion of scrupulosity. Indefiniteness can be urged only from the standpoint of *numerical* computation; there is admittedly, however, the measurement of a moral estimate, used commonly in respect to human acts. On the other hand, where is it demonstrated that eating, even under the fasting observance, postulates a numerical measurement? It is not demonstrated.

IV. The Relative Norm of the Collation in the Nineteenth Century

It seems opportune and useful to introduce the following brief investigation into the doctrines of the nineteenth century with the statement of Ballerini (+1881)-Palmieri (+1909). It embodies a classical exposition of the juridic principle universally accepted, from which the practical application of any doctrine concerning the collation must derive its validity. According to their teaching, the establishment of the collation depends upon custom created in keeping with the law of fast; and such custom acquires its juridic

essence and status from the fact of its sufficiently determined tacit approval by the ecclesiastical authorities.[50] This juridic principle was understood and held as validly operative in times past and is likewise operative at the present time under canon 1251, §1, where it is laid in the phrase: ". . . servata tamen circa ciborum quantitatem et qualitatem probata locorum consuetudine." Validly operative, that is to say, that without such at least tacit approval the usage of the people of a given locality has no legitimate standing. The authors mentioned add significantly, that the custom intended is presently existing custom; not the usage of any past generation, which is not normative for the present subject matter.[51] Hence it is obvious that the usage in question is not required to run the gamut of the statutory period of forty years [52] before achieving the status of legitimacy.[53]

Mercante (+1834) followed the received principles governing the Relative Norm without adoption of a uniform, numerical measure as more correct, most probable and more secure, and more sane, as he states.[54] That is, as his text indicates, he thus approved the fourth or fifth portion of the full meal computed according to the personal and local circumstances of the individual.

The text of Porpora resembles strongly that of St. Alphonsus' treatment of the subject, inasmuch as it seems to follow his order and thought sequence, though this author does not mention him. After briefly reviewing the variant opinions on the question, Porpora approved as preferable the eight ounce collation, as in keeping

[50] " Bene et sedulo advertendum, quod passim de hac re monent Doctores: quidquid de hac collatiuncula statuitur, id salva quidem lege jejunii, inniti consuetudini, ad cuius legitimam rationem confert, quod Ecclesae Praelati silentio suo satis approbant."—*Opus Theologicum Morale,* Volumen II, Tractatus VI, Sect. I, n. 43.

[51] " Porro consuetudo intelligenda est, uti patet, non quae propria fuit praeteritae cuiuspiam aetatis, sed nostrae. Ergo hac in re absonum foret quaestionem decernere ex iis, quae traduntur a DD. diversae aetatis: quia illi de consuetudine sui temporis, non de nunc vigenti, scripserunt."—*Loc. cit.*

[52] Cf. cann. 27, 28, 30.

[53] Cf. Kelley, The Jurist, VIII (1948), 151–152, and authorities there cited.

[54] *Compendio di Diritto Canonico,* (ed. seconda, dall' autore corretta ed ampliata. Prato, 1832), Tomo II, Titolo IX, Del Digiuno, Sezione III, § XIX–XX.

than the more common opinion and as derogatory to the general acceptation and common practice of Christian people. But his account is permissible to everyone. Moreover, in concluding, the question of [illegible] additional ounces not being considered grave matter [illegible] obviously even more is allowed in virtue of a just cause.[85]

At about the middle of the nineteenth century and thereafter a notable uniformity of doctrine with a few exceptions is discernible similar to the teaching just presented from the work of [illegible]. There is in fact uniformity even in the manner of presentation, not to speak of the subject matter. The writer sees in the majority of authorities of this period a strong influence of the doctrine of St. Alphonsus so that they, in effect, would appear as his commentators. These considerations warrant a treatment of this era by way of presenting the theological doctrines respectively and, where possible, systematically, proceeding from the general to the particular with reference to any special features of an individual author. As will be seen, the authors adopt the results arrived at during the two centuries immediately preceding.

Gury (-1866) permits the amount of about eight ounces [illegible] citing the doctrine of St. Alphonsus and in virtue of the same reasons for this position as those of the latter.[86] Konings (-1884) and in this respect is exactly the same as that of Gury.[87] In the manner these authors, citing St. Alphonsus, Elbel, and Lacroix, state that the quantity of eight ounces is allowable to all [illegible]. This view is also held by Scavini (-1869)[88] and by Ballerini-Palmieri.[89]

[85] "[illegible] [illegible] [illegible] [illegible] [illegible]" Theologia Moralis [illegible], Tractatus VI, pars II, Cap. III, n. [illegible].

[86] Compendium Theologiae Moralis [illegible] [illegible], Pars I, n. [illegible]. (Hereafter cited, Compend. Theol. Moral.)

[87] Theologia Moralis S. Alphonsi, in compendium redacta, et usui Venerabilis Cleri Americani accommodata (Bostoniae [illegible]), n. [illegible]. (Hereafter cited, Theol. Moral.)

[88] Theologia Moralis Universa, ad mentem S. Alphonsi M. de Ligorio Episc. et Doctoris [illegible] (Mediolani, [illegible]), I, n. [illegible]. (Hereafter cited, Theol. Moral. Univ.)

[89] Op. Theol. Moral., Vol. II, Tract. VII, Sect. I, n. [illegible].

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

noticed that the text of Elbel was re-edited by Bierbaum; in the re-edition the doctrine of Elbel on this subject was left intact.[64] Finally, the view of Bucceroni, based apparently also upon the authority of St. Alphonsus, agrees exactly with that of Gury.[65]

The immediately previous discussion obviously presents the question as to the rule or criterion of how much more food is permissible. The authorities cited clearly reply to this inquiry. It may be noted in passing, firstly, that the test proposed by them contains a strongly subjective element. Secondly, these authorities in propounding their rule supplied what the doctrine of St. Alphonsus did not express, but which it nevertheless at least gave them occasion to imply or add. And in doing so, they gave full impetus to the operation of the principles and considerations underlying the Relative Norm. It may be well to present the general doctrine on this point by beginning from a negative approach.

Bierbaum, adopting the view of Elbel, asserts as more probable that the eight ounce rule can not be employed as a universally applicable norm, because the constitutions and external conditions of individuals are different,[66] as already mentioned in discussing the doctrine of Elbel, who, as may likewise be seen in Bierbaum's text, proposed the fourth part of the full meal taken by the individual under his respective circumstances.[67] Cardinal Gousset (+1867), once Archbishop of Rheims, appears hesitant about submitting even this norm as a general rule, precisely because of personal differences in general complexion and physical constitution—considerations which, as already shown in regard to the doctrine of Billuart, were prompted or supported by the teaching of St. Thomas, which Gousset quotes on this point.[68] However, in his want of final conviction

[64] Cf., *Theologia Moralis* (novis curis edidit P. F. Irenaeus Bierbaum, O.S.F., anno 1890; Paderbornae, 1891), Pars III, Conferentia XVII, n. 479. (Hereafter cited: *Theol. Moral.*)

[65] *Institutiones Theologiae Moralis,* secundum doctrinam S. Thomae et S. Alphonsi (4. ed., Romae, 1900), I, n. 1593. (Hereafter cited: *Instit. Theol. Moral.*)

[66] *Theol. Moral.,* Pars III, Conferentia XVII, n. 479.

[67] *Ibid.,* n. 481.

[68] "Quant à la quantité des aliments pour la collation, les auteurs ne s' accordent pas: les uns permettent de prendre le quart de ce qu' on mange ordinairement à son repas; d' autres ne permettent que trois ou quatre onces de

he did not stand entirely alone. For, by reason of these and other more particular considerations, even those who maintain the eight ounce standard as a basic norm do not attempt to establish, in respect to a required additional quantity, a generally applicable rule similar to that of the fourth portion of the full meal. Thus, Gury-Ballerini-Palmieri expressly admit that, while more nourishment must be permissible to those who require it, yet an entirely predetermined rule can not be established, since the general complexion and the duties of the individual, and the duration of the fast must be taken into account.[69] Konings and Bucceroni agree with these propositions.[70] The duration of the period of fast is a factor especially emphasized by Gousset; one can with much less difficulty sustain the fast on the isolated occasions of vigils and the ember days than in the face of the prolonged fasting observance during Lent.[71] Therefore, he concludes with good reason, the amount of the collation ought to be somewhat reduced on the former occasions. For whatever might be said about this conclusion as a particular judgment, one can not fail to appreciate that it embodies a fundamental principle directly to be implied in the doctrines on the Relative Norm; namely, that they must be employed by the individual with proper prudence operating in good faith and good will in respect to

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nourriture. Saint Alphonse . . . huit onces, et même dix. Mais il ne nous paraît pas qu' on puisse donner ici aucune règle fixe et générale; on doit avoir égard au plus ou moins de force du temperament, de la constitution physique, qui n' est certainement pas la même pour tous. . . . ' Quantitas cibi non potest eadem omnibus taxari, propter diversas corporum complexiones, ex quibus contingit quod unus majori, alter minori cibo indiget.' (note 3.—S. Thomas, Sum. part. 2.2. quaest. 147. art. 6.)"—*Théologie Morale,* à l' usage des curés et des confesseurs (14. ed., Paris, 1869), Tome Premier, p. 113, n. 297. Hereafter cited: *Théol. Morale.*)

[69] " Quantitas octo uniciarum nemini deneganda videtur, maior autem concedenda iis, quibus haec non sufficeret.—S. Lig. ibid.—Elbel, Lacroix.—Sane statui nequit regula omnino fixa, cum etiam ad complexionem, munera obeunda, durationem ieiunii, etc. attendi debeat."—*Compend. Theol. Moral.* I, n. 497. Gury's *Compendium* of 1874 has the same text in Pars I, n. 497, and in note 2.

[70] *Theol. Moral.,* n. 563; *Instit. Theol. Moral.,* I, n. 1593.

[71] " Il faut encore avoir égard à la continuité du jeûne: la collation des vigiles ou des quatre-temps doit être moins forte que celle du carême, parce qu' il est plus facile d' en soutenir la rigeur."—*Théol. Morale,* Tome Premier, n. 297.

his obligation of fasting. There are other ecclesiastical laws, likewise concerned primarily with personal sanctification, which rest on the same postulate.

The considerations mentioned above have regard to the general personal factual circumstances of the individual. In addition to these the external factor of his locality must be considered. For, as Gury-Ballerini-Palmieri point out, the climatic conditions of his locality may demand a greater amount of food.[72] The same observation is made by Konings,[73] Bucceroni upon the cited authority of St. Alphonsus,[74] and by Scavini, who offers the Germanic countries as an example.[75]

It seems that one should expect this result, in view of all that has been considered in this study. The variant general personal and local circumstances prohibit the formulation of even an ultimate, predetermined, uniform standard, because the proponents of the Relative Norm have recognized these elements as operative facts of daily life in relation to the observance of fast. Hence, for these same reasons and in view of the more particular concrete, personal consequences which may devolve therefrom upon individuals severally, they have, as a result consistent with their doctrine, in a positive manner charged the person concerned, with the duty of prudently determining and of judging for himself what amount of food he requires at the collation, in accord, however, with the law of fast, which prohibits *per diem* a nutritional quantity tantamount to another full meal.

Accordingly, Gury-Ballerini-Palmieri, citing Scavini and Gousset, assert that it is permissible to take an amount which a person prudently [76] considers necessary in order to obviate a state of indisposition which hinders him from properly performing his duties.[77]

[72] "Habenda etiam est ratio propriae regionis, sicubi maior cibi quantitas necessaria est."—*Compend. Theol. Moral.*, I, n. 497.

[73] *Loc. cit.*

[74] *Instit. Theol. Moral.*, I, n. 1593.

[75] "Item habenda est ratio locorum, quae abundantiorem cibum exigunt; ut est Germanica regio."—*Theol. Moral. Univ.*, I, n. 275, 2.

[76] Scavini, *loc. cit.*

[77] "Licet in genere sumere quantum necessarium quis ducit ad evitandam indispositionem, quae ipsum impediat, quominus officia sua convenienter obeat.—Scav., Gousset."—*Compend. Theol. Moral.*, I, n. 497.

Konings, also citing Scavini and Gousset with approval,[78] and Bucceroni are in agreement with this view.[79] The grounds upon which such individual judgment and decision are to be based have been described with particularity. Gousset proposes that attention be directed to the strength or weakness of one's constitution, to the fatigue experienced, and to the tasks which one is obliged to discharge.[80] Scavini, referring to the pertinent text of Gousset, concurs in this view. In fact, on the present point his doctrine follows that of the latter quite closely. Scavini thus explains that those obliged to fast are nevertheless entitled to an amount of food sufficient to obviate the difficulties to health which impede the proper performance of their duties, and in due proportion to the strength or debility of their general complexion and to the tasks required to be accomplished.[81] In sum and substance, the doctrine states that this matter is left to the prudent discretion and judgment of the individual concerned, based upon his concrete personal and local circumstances. But, at all events, his collation may not approach the semblance of a second full meal.[82] In other words, it seems entirely correct to state that the minor repast must be appreciably less than the person's full meal.[83] The possible objection of indefi-

[78] *Theol. Moral.*, n. 563.

[79] *Instit. Theol. Moral.*, I, n. 1593.

[80] "Ainsi, pour ce qui regarde la collation, les personnes tenues au jeûne prendront autant de nourriture qu' elles le jugeront necessaire, pour éviter une indisposition qui les empêcherait de remplir convenablement leurs fonctions, eu égard à la force ou a la faiblesse de leur constitution, aux fatigues qu' elles éprouvent, et aux occupations auxquelles elles sont obligées de se livrer. Un curé, par exemple, qui est chargé d' une paroisse considerable, peut certainement, sans être dispensé du jeûne, prendre plus de nourriture qu' un autre qui travaille moins, toutes choses égales d' ailleurs."—*Théol. Morale*, Tome Premier, n. 297.

[81] *Theol. Moral. Univ.*, I, n. 394.

[82] "Au repas qu' il est permis de faire les jours de jeûne, on peut, d' apres un usage généralment reçu, ajouter une légère collation; mais elle doit être telle pour la qualité et la quantité des aliments qu' on ne puisse la regarder comme un second repas."—Gousset, *Théol. Moral.*, Tome Premier, p. 113, n. 296; ". . . attamen cavendum, ne coenula de facili convertatur in coenam." —Scavini, *Theol. Moral. Univ.*, I, n. 394.

[83] Thus see Kelley, The Jurist, VIII (1948), pp. 158, 161, 167. At the last mentioned page one will find approximately the same assertion adduced as

niteness can be raised only from the viewpoint of attempting to establish antecedently a uniform, numerical quantity.

Where the doctrines considered in this study, which constitute the principles underlying the Relative Norm, are actually adopted in popular usage approved by ecclesiastical authority, they represent the law as to the amount of food permissible at the collation in conformity with the provisions of canon 1251 of *The Code of Canon Law.*

Since the amount of food allowable at the collation has here been discussed, and especially as to its quantitative relation to a person's full meal, it seems necessary to make an observation concerning its relation to the fasting breakfast (the *frustulum,* so-called).

It is stated that the two ounce breakfast arose at the time of St. Alphonsus, since which time the usage of the popular two and eight ounce standards for the breakfast and the collation, respectively, has been extant.[84] The time and manner of origin of this breakfast is unimportant here. It is true that the authorities used in this study do not refer to the breakfast when speaking about the amount of food at the collation. However, the modern usage of a breakfast is a fact. Hence it is important to remark that whatever amount may be taken at the breakfast—which amount, incidentally, is similarly amenable to the local custom mentioned in canon 1251, §1—must be included in the amount which, as indicated in the foregoing in respect to the collation, is to be appreciably less than the amount of the permitted one full meal which the individual takes on a day of fast. In other words, the two minor meals must together be in appreciably smaller amount.[85]

One final observation may be useful. It has been noted in effect that thirty-two ounces constitute the normal full meal.[86] This proposition is, of course, an abstraction. The thought is not new; notably Escobar (+1669) seems to have had this idea,[87] which may

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that of "*auctores probati*", which is presented above from Gousset and Scavini in respect to the decision allowed to the individual concerning his required amount of nourishment.

[84] Cf. Kelley, *op. cit.,* p. 147.

[85] Cf. Kelley, *op. cit.,* pp. 158, 161, 167.

[86] Cf. Kelley, *op. cit.,* p. 158.

[87] *Liber Theol. Moral.,* Primus Tract., Examen XIII, cap. III, n. 61.

also be seen in the tract of Ballerini-Palmieri.[88] In view of the doctrines of the Relative Norm, it may be said that it serves, at its best, as an example. Thus, a suggested apportionment of from sixteen to twenty ounces as between the breakfast and the collation results in an amount noticeably less than thirty-two ounces.[89]

No purpose is served in examining the more recent and modern doctrines on this subject. This field has been sufficiently traversed in the comparatively recent past,[90] so that, it seems, another attempt therein could be anticipated only as a fruitless repetition.

J. Schmidt

The Catholic University of America.

[88] *Op. Theol. Moral.*, Vol. II, Tract. VII, Sect. I, n. 42.

[89] Cf. Kelley, *op. cit.*, p. 158.

[90] Cf. Kelley, *op. cit.*, pp. 145–169, and authorities there cited; especially pp. 156–157.

FOREIGN POLICY OF THE UNITED STATES

Dr. Carlton J. H. Hayes, retired member of the Faculty of Columbia University and former United States Ambassador to Spain, speaking at a dinner of the Alumni Association of Columbia College (Columbia University), which presented him with its 1952 Alexander Hamilton medal for "distinguished service and accomplishment", called the foreign policy of the United States "peculiarly indecisive" and inconsistent, charging the government with inability to adopt positive programs in China, Spain, Korea, and Germany. He summarized his impressions of the foreign policy of the United States in the following language: "One day we decide to sacrifice China to Communism and to Russia. Another day we decide not to sacrifice Korea. Still another day we decide to fight an all-out war in Korea, but, while our casualties mount, to engage in seemingly endless truce talk. Ultimately, I suppose, more and more different decisions will be made about Korea, but who knows what they will be? Maybe we will admit defeat and withdraw. Maybe we will adopt General MacArthur's recommendations and seek victory. In Europe our decisions are scarcely more certain or consistent. We appease Russia. We get stiff with Russia. We disarm Germany. We rearm Germany. We ostracize Spain. We negotiate intimate agreements with Spain. Now we play fairy Godmother to our European allies by giving them billions of dollars, the while we threaten to adopt soon the role of miserly taskmaster."

TRIALS—EASTERN AND LATIN *

Differences due to clarification and betterments in the Latin Code (modifying the latter or adding new prescripts).

IN the preceding number of THE JURIST there was published the first part of this article. That portion of the article dealt with four categories of differences discerned through a comparison of the two sources of norms for ecclesiastical trials. The first category contained differences due to the law and the traditions of the East; the second category, differences resulting from the publication of the Oriental Code part by part; the third category, differences due to the present condition of dioceses in the East; and the fourth category, differences due to the insertion of authentic interpretations. The present installment deals with differences due to clarification and betterments in the Latin Code (modifying the latter or adding new prescripts). The Canons of the Oriental Code which are hereafter printed in italics are new if compared with the Latin Code. They derive for the most part from the sources indicated in the *Codex Iuris Canonici*, from norms of the Sacred Roman Rota, from approved authors and from various civil codes.

(1) can. 35	compared with	can. 1571
Qui causam vidit vel in eadem causa operam praestitit in uno iudicii gradu, nequit in alio eandem causam iudicare aut partem assessoris agere.		Qui causam vidit in uno iudicii gradu, nequit eandem causam in alio iudicare.

(2) can. 36	compared with	can. 1601
§1. Contra Hierarcharum decreta, actus, dispositiones, quae ad regimen seu administrationem eparchiae spectant, non datur		Contra Ordinariorum decreta non datur appellatio seu recursus ad Sacram Rotam; sed de eiusmodi recursibus exclusive

* Paper read October 12, 1951, by Very Rev. Thomas J. Tobin, S.T.D., J.C.D., LL.D., Vicar General of the Archdiocese of Portland, at the annual meeting of The Canon Law Society of America, in Chicago.

appellatio, ne ratione quidem refectionis damnorum, sed tantum recursus.

§2. De recursu, de quo in §1, qui fiat ad Sedem Apostolicam, vident exclusive Sacrae Congregationes.

cognoscunt Sacrae Congregationes.

(3) can. 41, §1 compared with can. 1574, §1

In qualibet eparchia, nonnulli presbyteri integrae famae et in iure canonico periti, etsi alius eparchiae, nominentur ut in litibus iudicandis partem habeant; quibus nomen est iudicum eparchialium.

can. 41, §2, n. 2°

Ad officium iudicis eparchialis designari potest presbyter etiam alius eparchiae, de consensu tamen sui Hierarchae.

In qualibet dioecesi presbyteri probatae vitae et in iure canonico periti, etsi extradioecesani, non plures quam duodecim eligantur ut potestate ab Episcopo delegata in litibus iudicandis partem habeant; quibus nomen esto *iudicum synodalium* aut *pro-syndalium*, si extra Synodum constituuntur.

(4) can. 44 compared with can. 1574, §2

Iudices eparchiales removeri ab Episcopo possunt gravi de causa et auditis, nisi contrarium opportunum ipse duxerit, eparchialibus consultoribus.

Quod ad eorum electionem, substitutionem, cessationem aut remotionem a munere attinet, serventur praescripta can. 385–388.

(5) can. 49–50 compared with can. 1584

can. 49

§1. Tribunalis collegialis praeses, nisi ipse velit id officium gerere, debet unum de iudicibus tribunalis collegialis ponentem designare.

§2. Idem praeses potest ponenti alium ex iuxta causa substituere.

Tribunalis collegialis praeses debet unum de iudicibus collegii ponentem seu relatorem designare qui in coetu iudicum de causa referat et sententias in scriptis redigat; et ipsi idem praeses potest alium ex iusta causa substituere.

can. 50

§1. Ponens processum dirigit et decernit quae pro iustitiae administratione in causa quae agitur necessaria sunt.

§2. Ponens in conventu iudicum de causa refert et sententiam in scriptis redigit.

(6) can. 58–61

can. 58

§1. In causis criminalibus promotor iustitiae gerit partes accusatoris, eo tendens ut delinquentes iuste puniantur.

§2. Licet vero eius sit accusare et sustinere ex officio accusationem, id tamen praestare non debet, si censeat accusationem prorsus fundamento destitui.

can. 59

§1. In causis contentiosis Hierarchae est ferre iudicium de eo utrum bonum publicum in discrimen vocari possit necne, nisi interventus promotoris iustitiae ex natura rei evidenter necessarius dicendus sit, ut in causis impedimenti ad matrimonium contrahendum, separationis inter coniuges, piae fundationis quod attinet ad eius exsistentiam, iuris fundationis seu iurispatronatus propter libertatem Ecclesiae tuendam, etc.

§2. Si in praecedentibus instantiis intervenerit promotor iusti-

tiae, huius interventus praesumitur necessarius.

can. 60

§1. Promotor iustitiae in causis contentiosis bonum publicum tuetur. Itaque, quoad fieri potest, salva rei veritate, defendit e re nata iura matrimonii, piarum fundationum, Ecclesiae.

§2. Si causa plura capita complectatur, quorum quaedam dumtaxat ad bonum publicum spectant, de iis tantum promotor iustitiae curabit.

can. 61

In causis contentiosis, ad tuendum bonum publicum, praeter promotorem iustitiae, admitti possunt ab Hierarcha, eodem promotore audito, aliae personae praesertim morales.

(7) *can. 64*

Nisi aliud expresse caveatur:

1° Quoties lex praecipit ut iudex partes earumve alteram audiat, etiam promotor iustitiae et vinculi defensor, si iudicio intersint, audiendi sunt;

2° Quoties instantia partis requiritur ut iudex quid decernere possit, instantia promotoris iustitiae vel vinculi defensoris, qui iudicio intersint, eamdem vim habet.

(8) can. 76 compared with can. 1596

Si collegialiter causa in prima instantia cognita fuit, etiam in gradu appellationis collegialiter nec a minore iudicum numero definiri debet; si autem ab unico iudice, etiam in gradu appellationis ab unico iudice definienda est.

Si collegialiter causa in prima instantia cognita fuerit, etiam in gradu appellationis collegialiter nec a minore iudicum numero definiri debet.

(9) cann. 94–122 compared with cann. 1925–1932

(canons 99–102; 104–122 are new)

can. 94, §1

Cum valde optandum sit ut lites inter fideles evitentur, proposita aliqua controversia quae privatum eorum bonum respiciat, iudex partes exhortetur ut per transactionem, si qua concordiae spes affulgeat, lis componatur.

can. 1925, §1

Cum valde optandum sit ut lites inter fideles evitentur, iudex exhortationes adhibeat, ut cum aliqua contentiosa controversia quae privatum eorum bonum respiciat, ei proponitur iudicii forma dirimenda, per transactionem, si qua concordiae spes affulgeat, lis componatur.

can. 96, §1, n. 1°, 2°, 3°, 4°

§1. Transactio fieri valide nequit in causa:

1° Criminali;

2° De vinculo matrimonii;

3° De re beneficiaria, cum de ipso beneficii titulo disceptetur, nisi legitima accedat auctoritas;

4° De rebus spiritualibus quotiescumque interveniat solutio rei temporalis.

can. 1927, §1

Transactio fieri valide nequit sive in causa criminali, sive in contentiosa in qua agitur vel de matrimonio dissolvendo, vel de materia beneficiaria, cum de ipso beneficii titulo disceptatur, nisi legitima accedat auctoritas, nec de rebus spiritualibus quotiescumque interveniat solutio rei temporalis.

can. 98

§1. Qui controversiam inter se habent, possunt scripto conve-

can. 1929

Ad evitandas iudiciales contentiones, partes possunt quoque in-

nire ut ea ab arbitris dirimatur.
§2. Idem scripto convenire possunt qui contractum inter se ineunt vel inierunt, quod attinet ad controversias ex eo contractu forte orituras.

can. 99

Nequeunt in arbitros compromitti controversiae de quibus transactio fieri vetatur.

can. 100

§1. Unus vel plures arbitri constitui possunt, dispari tamen numero.

§2. In ipso compromisso, nisi nominatim designentur, debet saltem eorum numerus praefiniri et simul ratio statui qua nominandi sint.

can. 101

Compromissum est irritum:

1° Si servatae non sint normae statutae ad validitatem contractuum, qui ordinariam administrationem excedunt;

2° Si scripto non sit exaratum;

3° Si procurator sine mandato speciali in arbitros compromisit aut violata sint praescripta can. 99 vel 100;

4° Si controversia non sit vel orta, vel ex certo contractu oritura, ad normam can. 98.

ire conventionem, qua controversia committatur iudicio unius vel plurium qui ad normam iuris quaestionem dirimant, vel de bono et aequo negotium pertractent et transigant; illi *arbitri*, isti *arbitratores* proprio nomine appellantur.

can. 102

§1. Si arbitri non sint in compromisso designati, vel si sufficiendi sint, et partes aliive, quibus designatio demandata est, dissentiant de omnibus vel nonnullis arbitris seligendis, quaelibet pars potest id tribunali quod competens esset ad causam definiendam in primo gradu committere, nisi partes aliter convenerint. Tribunal auditis ceteris partibus, decreto provideat.

§2. Eadem norma servanda est si qua pars aliusve negligat arbitrum designare, dummodo tamen ipsa pars quae ad tribunal recurrit, viginti saltem ante dies, suos arbitros, si forte debuit, designaverit.

can. 103 compared with can. 1931

§1. Ab arbitri munere prohibentur:

1° Minores;

2° Excommunicati, infames et exclusi ab actibus legitimis coram Ecclesia post sententiam declaratoriam vel condemnatoriam;

3° Laici in controversiis de quibus in can. 2, §1, n. 1–2.

§2. Religiosi munus arbitri ne suscipiant sine licentia Superioris.

Prohibentur ad arbitri munere valide gerendo laici in causis ecclesiasticis, excommunicati et infames post sententiam declaratoriam vel condemnatoriam; religiosi vero munus arbitri ne suscipiant sine venia Superioris.

can. 104

Arbitri nominatio vim non habet, nisi ipse scripto munus acceptet.

can. 105

§1. Praeter obligationes compromisso statutas, arbitri iisdem tenentur obligationibus quibus iudices, nisi rei natura aliud ferat.

§2. Nisi sententia sit irrita propter gravem ipsorum culpam, arbitri ius habent:

1° Ad expensarum restitutionem; qua de re possunt sibi cavere ad normam can. 436, §2;

2° Ad honoraria, dummodo ne scripto se obligaverint ad gratuitam operam praestandam.

§3. Partes obligatione in solidum tenentur expensas et honoraria solvendi, salvo iure regressus.

can. 106

§1. Arbitri recusari possunt propter suspicionem, servato praescripto can. 143, §1.

§2. De recusatione autem videt tribunal de quo in can. 102, §1; quod, auditis arbitris recusatis et partibus, decreto quaestionem dirimat, arbitris quos suspectos declaret, nisi in compromisso aliud cautum sit, alios sufficiens.

can. 107

§1. Nisi partes aliter statuerint, arbitri rationem procedendi, libere seligunt; simplex autem ipsa sit, et breves termini, naturali aequitate servata, et legis processualis ratione habita.

§2. Arbitri quavis coercitiva carent potestate; necessitate exigente, adire debent tribunal competens ad causam cognoscendam ut de poenis infligendis decernat.

§3. Praescripta can. 140, 265, §3, 277, §3 ad arbitrorum quoque iudicium, quatenus fieri possit, applicanda sunt.

can. 108

§1. Quaestiones incidentes quae forte exoriantur in iudicio arbitrali ipsi arbitri decreto dirimant.

§2. Si autem quaestio praeiudicialis oriatur de qua compromitti in arbitros, ad normam can. 99, nequeat, arbitri debent suspendere processum, donec de illa quaestione partes a iudice obtinuerint arbitrisque significaverint sententiam quae transierit in rem iudicatam, vel, si quaestio sit de statu personarum, sententiam quae exsecutioni mandari possit.

§3. Arbitri provisiones de quibus in can. 189–198 decernere non possunt; necessitate exigente, servetur praescriptum can. 107, §2.

can. 109

§1. Nisi partes aliter statuerint, arbitri sententiam proferre debent intra sex menses a die quo omnes munus acceptaverint.

§2. Terminus prorogari potest a partibus; his autem dissentientibus, a tribunali de quo in can. 107, §2, auditis partibus, dummodo prorogatio necessaria sit, nec tamen ultra tres menses.

§3. Decursus termini suspenditur si qui arbiter subrogandus sit, aut si casus eveniat de quo in can. 106, §1, 108, §2, 255, n. 1, 257; ipso iure autem pars termini quae superest ad viginti dies prorogatur, si sit minor.

§4. Si arbiter unicus, vel omnes subrogandi sint, terminus interrumpitur.

can. 110

Arbitri sententiam ferre debent ad normam iuris.

can. 111

§1. Arbitrorum sententia ad maiorem suffragiorum numerum fertur.

§2. Conscribi autem debet ad normam can. 396–398, quatenus res patitur, et addita mentione compromissi quo arbitrorum potestas innititur.

§3. Sententia a singulis arbitris subscribi debet; ad eiusmet autem validitatem requiritur et

sufficit ut maior eorum numerus eidem subscribat, dummodo rationum, ob quas ceteri non subscripserunt, expressa mentio in eadem sententia fiat.

can. 112

§1. Exaratae ab arbitris sententiae integer textus intra quindecim dies ad cancellariam tribunalis eparchiae ubi sententia data est deponi debet; et intra quinque dies a depositione, nisi certo constet sententiam nullitate insanabili affectam esse, vicarius iudicialis, per se vel per alium, decretum confirmationis proferat, partibus statim notificandum.

§2. Si vicarius iudicialis hoc decretum proferre recuset, vel si transactis decem diebus a deposita sententia decretum non ediderit, pars cuius interest recurrere potest ad tribunal appellationis, servatis praescriptis can. 231, §3, 232.

can. 113

Data ab arbitris sententia, etiamsi eadem irrita declaretur, nec partes iure aliquo suo cadunt, nec terminorum lapsus habetur; sed sive illud sive hi suspenduntur, usque ad transactos decem dies ab illo, quo iudiciali sententia, quae illam arbitrorum nullam declaravit, in rem iudicatam transiit.

can. 114

§1. Excepta sententiae correctione, de iuris remediis contra sententiam videt iudex qui competens est ad causam ab arbitris definitam in primo gradu iudicandam.

§2. Iudex qui huius sententiae nullitatem declaret, vel qui adversus eam concedat restitutionem in integrum, vel qui eam appellatione proposita reformandam ex toto vel ex parte censuerit, causam ipsam in primo gradu iudicare debet.

can. 115

Arbitrorum sententiae correctio, in casibus de quibus in can. 402, §1, peti potest a iudice loci in quo sententia data est, qui praescripta §§2–3 eiusdem canonis servare debet.

can. 116

§1. Querela nullitatis sanabilis proponi potest, intra mensem a notificatione decreti de quo in can. 112:

1° Si compromissum sit irritum, firmo praescripto can. 117, §1, n. 2;

2° Si violatae sint normae de quibus in can. 102, 103;

3° In casibus de quibus in can. 420, n. 2–4;

4° Si arbitri suae potestatis fines excesserint, vel terminos ad sententiam proferendam vel can-

cellariae tribunalis tradendam non servaverint.

§2. Nequit autem proponi propter nullitates de quibus in n. 1 et 2, vel propter decursum termini ad sententiam proferendam, nisi a parte quae, ante sententiae pronunciationem, nullitatem arbitris denunciaverit.

can. 117

§1. Querela nullitatis insanabilis proponi potest, servatis praescriptis can. 419 et 424, §1:

1° In casibus de quibus in can. 418, n. 2–3;

2° Si violatum sit praescriptum can. 99.

§2. Terminus ad querelam nullitatis insanabilis proponendam decurrit a notificatione decreti de quo in can. 112.

can. 118

Restitutio in integrum proponi potest, in casibus can. 432 statutis, intra terminum unius mensis, ad normam eiusdem canonis supputandum.

can. 119

Tertii oppositio admittitur secundum normas can. 425–428 statutas.

can. 120

Appellatio a sententia arbitrali tunc tantum admittitur cum partes scripto inter se convener-

unt sententiam huic remedio subiectum iri; quo in casu appellatio proponenda est intra decem dies a notificatione decreti de quo in can. 112, coram ipso iudice, qui decretum tulit; si autem alius sit iudex competens ad appellationem recipiendam, prosecutio coram eo intra mensem est facienda.

can. 121

§1. Arbitrorum sententia contra quam appellatio non admittitur, transit in rem iudicatam statim ac decretum de quo in can. 112 prolatum sit.

§2. Arbitrorum sententia, contra quam appellatio admittitur, transit in rem iudicatam ad normam can. 429, n. 2.

can. 122

§1. Arbitrorum sententiae exsecutio fieri potest in iisdem casibus quibus admittitur exsecutio sententiae iudicialis.

§2. Exsecutio pertinet ad Hierarcham loci in quo data est, nisi partes alium exsecutorem designaverint.

(10) can. 128, §2 compared with can. 1613, §2

In iisdem adiunctis ab officio suo abstinere debent iustitiae promotor, defensor vinculi, assessor et auditor.

In iisdem rerum adiunctis ab officio suo abstinere debent iustitiae promotor et defensor vinculi.

(11) can. 134, §1 compared with can. 1619, §1

Nisi lex aliud caveat, si actor pro re sua probationes quas afferre posset, non afferat, vel reus exceptiones sibi competentes non opponat, iudex ne suppleat excepto casu evidentis negligentiae vel doli partium, vitandae iniustae sententiae causa.

Si actor pro re sua probationes suas afferre posset, non afferat, vel reus exceptiones sibi competentes non opponat, iudex ne suppleat.

(12) can. 135 compared with can. 1620

Iudices et tribunalia curent ut quamprimum, salva iustitia, causae omnes terminentur, utque in iudicio primae instantiae ultra biennium non protrahantur, in gradu vero appellationis ultra annum.

Iudices et tribunalia curent ut quamprimum, salva iustitia, causae omnes terminentur, utque in tribunali primae instantiae ultra biennium non protrahantur, in tribunali vero secundae instantiae ultra annum.

(13) can. 136, §2, nn. 1°, 2° compared with can. 1621, §2

Etiam iudex a Sede Apostolica vel a Patriarcha delegatus idem iusiurandum praestare debet cum primum tribunal constituitur, adstante ipsius tribunalis notario, qui de praestito iureiurando actum redigat;

2° Obligatio de qua in n. 1° tenet quoque iudicem ordinarium in monasteriis, in Ordinibus itemque in Congregationibus exemptis.

Etiam iudex a Sede Apostolica delegatus vel iudex ordinarius in religione clericali exempta idem iusiurandum praestare tenetur cum primum tribunal constituitur, adstante ipsius tribunalis notario, qui de praestito iureiurando actum redigat.

(14) *can. 159, §2, n. 2°*

In causis in quibus appellans, qui ad Sedem Apostolicam provocat, ad patrocinium gratuitum iam admissus fuerit, versio actorum fit ex officio a tribunali

coram quo acta ipsa exarata sunt.

(15) can. 160, §2 compared with can. 1645, §4

Nisi iudici ob peculiares rationes aliud videatur, anonymae epistulae atque libelli quae nihil ad causae meritum conferunt, et etiam subscripta quae sint certo calumniosa, destruantur.

Anonymae epistolae quae nihil ad causae meritum conferunt, et etiam subscriptae quae sint certo calumniosae, destruantur.

(16) can. 169, §2 compared with can. 1654, §2

Alii excommunicati generatim stare in iudicio queunt, nisi exceptio opponatur ad normam can. 143, §3.

Alii excommunicati generatim stare in iudicio queunt.

(17) *can. 177*

Si quis, cum mandatum nequeat probare, libellum iudicialem ad iuris exstinctionem impediendam exhibere nomine alterius velit, vel singulos actus urgente necessitate ponere in processu, potest arbitrio iudicis admitti, praestita, si res ferat, idonea cautione; actus autem qualibet vi caret, nisi, intra terminum peremptorium a iudice statuendum, mandatum rite probet.

can. 178

Procuratori valide notificantur omnia acta processualia quae partibus notificari debent vel possunt, nisi iudex aliter statuat.

(18) can. 179 compared with can. 1662

Quoties ius requirit speciale mandatum in procuratore vel

Nisi speciale mandatum habuerit, procurator non potest re-

certum actum ponere valeat, uti est renuntiare actioni, instantiae vel actis iudicialibus, transigere, pacisci, compromittere in arbitros, deferre aut referre iusiurandum, procurator qui sine mandato actum illum ponit, nihil agit.

nuntiare actioni, instantiae vel actis iudicialibus, nec transigere, pacisci, compromittere in arbitros, deferre aut referre iusiurandum, et generatim ea agere pro quibus ius requirit mandatum speciale.

(19) can. 189, §1 compared with can. 1672, §1

Qui probabilibus saltem argumentis ostenderit super aliqua re ab alio detenta ius se habere sibique damnum imminere nisi res ipsa custodienda tradatur, ius habet obtinendi a iudice eiusdem rei sequestrationem.

Qui ostenderit super aliqua re ab alio detenta ius se habere sibique damnum imminere nisi res ipsa custodienda tradatur, ius habet obtinendi a iudice eiusdem rei sequestrationem.

(20) *can. 192*

Iudex potest ei cui sequestrationem rei vel inhibitionem exercitii iuris concedit, praeviam imponere cautionem de damnis, si ius suum non probaverit, resarciendis.

can. 194

Quoties introducta est petitio ad obtinendam provisionem ad hominis sustentationem, iudex, auditis partibus, decreto statim exsequendo, statuere potest, idoneis si res ferat praescriptis cautionibus, ut interim necessaria alimenta praestentur, sine praeiudicio iuris per sententiam definiendi.

can. 195

Proposita a parte vel a promotore iustitiae petitione ad obtinendum decretum de quo in can. 194, iudex, audita altera parte, expeditissime provideat, numquam autem ultra decem dies; quibus inutiliter transactis, aut petitione reiecta, patet recursus ad Hierarcham cui tribunal subiicitur, dummodo ipse ne sit iudex, vel, si quis malit, ad iudicem appellationis, qui item expeditissime decernant.

(21) can. 196, §3 compared with can. 1676, §3

Nuntianti novum opus potest iudex praeviam imponere cautionem de damno, si ius suum non demonstraverit, resarciendo; ad iuris autem probationes afferendas duo menses praefiniuntur, qui, ex iusta et necessaria causa a iudice, audita altera parte, prorogari vel reduci poterunt.

Nuntianti novum opus ad ius suum demonstrandum duo menses praefiniuntur; qui ex iusta et necessaria causa a iudice, audita altera parte, prorogari vel reduci poterunt.

(22) can. 204 compared with can. 1684

§1. Actionem ad rescissionem actus positi ex metu gravi et iniuste incusso vel ex dolo, proponere potest:

1° Si agatur de actu inter vivos, ille qui metum vel dolum passus est eiusque heredes;

2° Si agatur de actu mortis causa, quilibet cuius intersit.

§2. 1° Eadem actione intra biennium uti potest, qui gravem ex contractu laesionem ultra dimidium ex errore passus est;

§1. Si quis motus metu gravi iniuste incusso, vel dolo circumventus actum posuerit vel contractum inierit qui ipso iure non sit nullus, poterit, metu vel dolo probato, obtinere actus vel contractus rescissionem actione quae vocatur *rescissoria;*

§2. Eadem actione intra biennium uti potest, qui gravem ex contractu laesionem ultra dimidium ex errore passus est.

2° Si tamen alter contrahens offerat talem contractus emendationem, quae sufficiat ad laesionem reparandam, iudex debet a contractus rescissione abstinere.

(23) can. 208 compared with can. 1688

§1. Restitutio in integrum peti debet intra quadriennium ab adepta maiori aetate computandum, si agatur de minoribus; a die laesionis factae et cessati impedimenti, si de maioribus aut personis moralibus.

§2. Minoribus vel minorum iure fruentibus restitutio concedi potest a iudice etiam ex officio, audito vel instante promotore iustitiae.

§1. Restitutio in integrum peti debet ab ordinario iudice, qui competens est respectu illius, contra quem petitur, intra quadriennium ab adepta maioritate computandum, si agatur de minoribus, a die laesionis factae et cessati impedimenti, si de maioribus aut personis moralibus.

§2. Minoribus vel minorum iure fruentibus restitutio concedi potest a iudice etiam ex officio, audito vel instante promotore iustitiae.

(24) can. 223, n. 2° compared with can. 1703, n. 2°

De actione ob delicta qualificata contra castitatem et iustitiam commutativam, quae quinquennio perimitur.

De actione ob delicta qualificata contra VI et VII divinum praeceptum, quae quinquennio perimitur.

(25) *can. 226*

Iudex nullam causam cognoscere potest, nisi petitio, ad normam canonum, proposita sit ab eo cuius interest, vel a promotore iustitiae.

can. 227

Introducta causa ad normam can. 228 et seqq., iudex proce-

dere potest ex officio, praeter alios casus iure expressos, in causis quae publicum Ecclesiae bonum aut animarum salutem respiciunt, ad normam can. 133.

(26) can. 254 compared with can. 1732

Instantiae initium fit citatione; finis autem omnibus modis, quibus iudicium terminatur, sed et antea instantia non solum interrumpi, verum etiam finiri potest sive peremptione sive renuntiatione.

Instantiae initium fit litis contestatione; finis autem omnibus modis, quibus iudicium terminatur, sed et antea non solum interrumpi, verum etiam finiri potest sive peremptione sive renuntiatione.

(27) can. 258 compared with can. 1736

Si nullus actus processualis, quin aliquod obstet impedimentum, ponatur in tribunali primae instantiae per annum aut in gradu appellationis per sex menses, instantia perimitur.

Si nullus actus processualis, quin aliquod obstet impedimentum, ponatur in tribunali primae instantiae per biennium aut in gradu appellationis per annum, instantia perimitur, et in altero casu sententia per appellationem oppugnata transit in rem iudicatam.

(28) can. 266, §2 compared with can. 1744

Post absolutas interrogationes iudex potest ab eo qui praestitit iusiurandum de veritate dicenda exigere iusiurandum de veritate dictorum sive circa omnes articulos sive circa aliquos tantum, quoties gravitas negotii aliave iusta causa id postulare videatur; debet autem in causis, in quibus bonum publicum vertitur, si forte iusiurandum de veritate dicenda omissum sit.

Iusiurandum de veritate dicenda in causis criminalibus nequit iudex accusato deferre; in contentiosis, quoties bonum publicum in causa est, debet illud a partibus exigere; in aliis, potest pro sua prudentia.

(29) cann. 353–354 compared with can. 1830

can. 353

§1. Iudicis est decreto definire an et quando adiuncta concurrant, cur iusiurandum suppletorium deferri debeat.

§2. Defertur sive ex officio, sive ad instantiam partis.

§3. Regulariter deferatur ei qui pleniores habet probationes.

can. 354

§1. Iureiurando suppletorio abstineat iudex, si de iure vel re magni pretii agatur aut de facto nimii momenti, aut si ius, res, factum non sit proprium personae cui iusiurandum esset deferendum.

§2. Huic iuriiiurando maxime locus est cum adiuncta, quae civilem vel religiosum personae statum respiciunt, aliter comperiri nequeunt.

§1. Huic iuriiurando vel maxime locus est cum adiuncta, quae civilem vel religiosum personae statum respiciunt, aliter comperiri nequeunt.

§2. Sed eodem abstineat iudex tum in causis criminalibus, tum in contentiosis, si de iure vel re magni pretii agatur aut de facto nimii momenti, aut si ius, res, factum non sit proprium personae cui iusiurandum esset deferendum.

§3. Deferre autem hoc iusiurandum potest sive ex officio, sive ad instantiam alterius partis, vel promotoris iustitiae, vel defensoris vinculi, si iudicio intersint.

§4. Regulariter deferatur ei qui pleniores habet probationes.

§5. Iudicis tamen est decreto definire an et quando adiuncta concurrant, cur iusiurandum suppletorium deferri debeat.

(30) can. 373 compared with can. 1849

Si die et hora, qua reus secundum citationis praescriptum coram iudice primum se sistit, actor non adsit, nullamque vel insufficientem absentiae excusationem attulerit, iudex eum ad instantiam rei conventi citet iterum; et si actor novae citationi non paruerit vel postea iudicium inchoare vel inchoatum

Si die et hora, qua reus secundum citationis praescriptum coram iudice primum se sistit, actor non adsit, nullamque vel insufficientem absentiae excusationem attulerit, iudex eum ad instantiam rei conventi citet iterum; et si actor novae citationi non paruerit vel postea iudicium inchoare vel inchoatum

prosequi neglexerit, instante reo convento vel promotore iustitiae aut defensore vinculi, contumax a iudice declaretur, iisdem servatis regulis quae supra traditae sunt pro rei contumacia, excepta tamen comminatione ecclesiasticarum poenarum.

prosequi neglexerit, instante reo convento vel promotore iustitiae aut defensore vinculi, contumax a iudice declaretur, iisdem servatis regulis quae supra traditae sunt pro rei contumacia.

(31) can. 387, §3 compared with can. 1863, §3

Iudex, et in tribunali collegiali, ponens, quoties pro suo prudenti arbitrio necessarium censeat, et sine nimio partium gravamine fieri animadvertat, mandare potest ut defensio typis imprimatur una cum documentis principalibus in fasciculo coniungendis, qui actorum et documentorum summarium continet.

Tribunalis praeses, quoties pro suo prudenti arbitrio necessarium censeat, et sine nimio partium gravamine fieri animadvertat, mandare potest ut defensio typis imprimatur una cum documentis principalibus in fasciculo coniungendis, qui actorum et documentorum summarium continet.

(32) *can. 406*

A delegato non datur appellatio ad delegantem nisi delegans sit ipsa Apostolica Sedes, firmo can. 404, n. 2.

(33) can. 421–422 compared with can. 1895

can. 421

Querela nullitatis in casibus de quibus in can. 420 proponi potest intra tres menses a die publicationis sententiae coram iudice qui sententiam tulit.

Querela nullitatis in casibus de quibus in can. 1894, proponi potest vel una cum appellatione intra decendium, vel seorsim et unice qua querela intra tres menses a die publicationis sententiae coram iudice qui sententiam tulit.

can. 422

Querela nullitatis in casibus de quibus in can. 418, 420 proponi potest una cum appellatione

coram iudice appellationis intra decem dies.

(34) can. 429, nn. 1°, 2°, 3°, 4°, 5° compared with can. 1902, nn. 1°, 2°, 3°

Firmo can. 404, res iudicata habetur:

1° Duplici sententia conformi;

2° Sententia intra utile tempus non appellata;

3° Sententia adversus quam appellatio interposita coram iudice a quo appellatum est, deserta est coram iudice appellationis ad normam can 412;

4° Renuntiatione appellationi, admissa ad normam can. 262, §2, vel peremptione instantiae in gradu appellationis ad normam can. 258;

5° Sententia definitiva unica, a qua non datur appellatio.

Res iudicata habetur:

1°. Duplici sententia conformi;

2°. Sententia intra utile tempus non appellata; aut quae, licet appellata coram iudice *a quo*, deserta fuit coram iudice *ad quem;*

3°. Sententia definitiva unica, a qua non datur appellatio ad normam can. 1880.

(35) can. 432, §1 compared with can. 1905, §1

Adversus sententiam contra quam non suppetat ordinarium remedium appellationis aut querelae nullitatis, datur, dummodo de iniustitia rei iudicatae manifesto constet, remedium extraordinarium restitutionis in integrum intra annum ab adepta maiore aetate computandum, si agatur de minoribus; a die cognitae iniustitiae rei iudicatae, si de maioribus aut personis moralibus.

Adversus sententiam contra quam non suppetat ordinarium remedium appellationis aut querelae nullitatis, datum remedium extraordinarium restitutionis in integrum intra fines can. 1687, 1688, dummodo de evidenti iniustitia rei iudicatae manifesto constet.

(36) can. 442, §§1, 2 compared with can. 1915, §§1, 2

§1. Qui exemptionem ab expensis vel earum deminutionem assequi vult, eam a iudice postulare debet, dato supplici libello, allatisque documentis quibus quae condicio sit postulantis quaeve eius rei familiaris copia demonstret; praeterea probare debet se non futilem neque temerariam causam agere.

§2. Iudex postulationem nec admittat nec reiiciat, nisi requisitis, si opus sit, notitiis etiam secretis quibus statum rei familiaris ipsius postulantis compertum habere possit auditoque promotore iustitiae; imo concessam potest etiam revocare, item audito promotore iustitiae, si in decursu iudicii assertam paupertatem non adesse compertum habuerit.

§1. Qui exemptionem ab expensis vel earum deminutionem assequi vult, eam a iudice postulare debet, dato supplici libello, allatisque documentis quibus quae conditio sit postulantis quaeve eius rei familiaris copia demonstret; praeterea probare debet se non futilem neque temerariam causam agere.

§2. Iudex postulationem nec admittat nec reiiciat, nisi requisitis, si opus sit, notitiis etiam secretis quibus statum rei familiaris ipsius postulantis compertum habere possit auditoque promotore iustitiae; imo concessam potest etiam revocare, si in decursu processus assertam paupertatem non adesse compertum habuerit.

(37) can. 443, §§1, 2 compared with can. 1916, §§1, 2

§1. Ad gratuitum pauperum patrocinium iudex in singulis causis designet aliquem ex advocatis in suo foro approbatis, qui ab hoc munere explendo, nisi ex causa iudici probata, sese subducere nequit, secus a iudice congrua poena, etiam suspensionis ab advocati munere exercendo, plecti potest.

§2. Deficientibus advocatis approbatis, iudex Hierarcham loci

Ad gratuitum pauperum patrocinium iudex in singulis causis eligat aliquem ex advocatis in suo foro approbatum, qui ab hoc munere explendo, nisi ex causa iudici probata, sese subducere nequit, secus a iudice congrua poena, etiam suspensionis ab officio, plecti potest.

§2. Deficientibus advocatis, iudex Ordinarium loci roget ut aliquam idoneam personam, si opus

roget ut aliquem ex aliis advocatis vel aliam idoneam personam, si opus sit, designet ad pauperis patrocinium suscipiendum.

§3. Si advocatus aliusve, cui gratuitum patrocinium commissum sit, munus suum debita diligentia non exerceat, ad illius observantiam a iudice revocetur, ad instantiam partis cuius interest vel promotoris iustitiae aut etiam ex officio.

(37) *can. 444*

§1. Si pars quae patrocinio gratuito usa est victoriam retulerit et vel pecuniae summam vel rem pretio aestimabilem consecuta fuerit quae sit quintuplo maior summa quae pro expensis iudicialibus, non exclusis honorariis advocati, solvenda esset, a summa pecuniae vel a pretio rei parti victrici adiudicatis detrahantur expensae iudiciales.

§2. Si pars quae gratuito patrocinio usa est victoriam retulerit et adversa pars in expensas iudiciales damnata sit, haec illas etiam iudiciales expensas solvat a quibus pars, gratuito fruens patrocinio, fuit exempta, non autem advocati honoraria, nisi et in ipsa pars victa condemnata fuerit.

(37b) can. 470 compared with can. 1962

Causas matrimoniales ad eos spectantes de quibus in can. 15, sit, designet ad pauperis patrocinium suscipiendum.

Causas matrimoniales ad eos spectantes de quibus in can.

n. 1, illa Sacra Congregatio vel illud Tribunal aut specialis ea Commissio exclusive cognoscet, cui eas Summus Pontifex in singulis casibus delegaverit; causas dispensationis super matrimonio rato et non consummato, Sacra Congregatio pro Ecclesia Orientali; causas vero quae referuntur ad privilegium Paulinum et causas inter partem catholicam et partem acatholicam, sive baptizatam sine non baptizatam, quocumque modo ad Sedem Apostolicam delatas, Sacra Congregatio Sancti Officii.

1557, §1, n. 1, illa Sacra Congregatio vel illud Tribunal aut specialis ea Commissio exclusive cognoscet, cui eas quoties Summus Pontifex delegaverit; causas dispensationis super matrimonio rato et non consummato, Sacra Congregatio de disciplina Sacramentorum; causas vero quae referuntur ad Privilegium Paulinum, Sacra Congregatio S. Officii.

(38) *can. 471, §2, n. 2°, §3* compared with can. 1963

§2. Si vero probationes de non secuta matrimonii consummatione hactenus instructae, habeantur non sufficientes, eaedem compleantur et acta dein plene instructa ad Sacram Congregationem remittantur.

§3. Pariter si iudex competens auctoritate propria iudicium peregerit de matrimonii nullitate, ex alio capite, et matrimonii nullitas evinci non possit, sed incidenter dubium valde probabile emerserit de non secuta matrimonii consummatione, tunc integrum est alterutri vel utrique parti libellum porrigere Romano Pontifici inscriptum, pro dispensatione a matrimonio rato et non consummato; et ipso iure fit po-

§1. Quare nullus iudex inferior potest processum in causis dispensationis super rato instruere, nisi Sedes Apostolica facultatem eidem fecerit.

§2. Si tamen iudex competens auctoritate propria iudicium peregerit de matrimonio nullo ex capite impotentiae et ex eo, non impotentiae, sed nondum consummati matrimonii emerserit probatio, omnia acta ad Sacram Congregationem transmittantur, quae iis uti poterit ad sententiam super rato et non consummato ferendam.

testas iudici causam instruendi. Idem iudex acta, plene instructa, dein ad Sacram Congregationem remittat.

(39) can. 486, §2 compared with can. 1979, §2

Ad mulierem vero inspiciendam designentur duae mulieres quae laurea doctorali in arte medica, vel saltem legitimo peritiae in arte obstetrica testimonio praeditae sint. Si vero tales mulieres ad inspectionem perficiendam haberi nequeant, tunc licitum erit Hierarchae, de consensu mulieris inspiciendae, examen peragendum committere viris, qui non tantum medica arte sint insignes, sed etiam religionis et honestatis laude commendati, moribus atque aetate graves.

Ad mulierem vero inspiciendam duae obstetrices, quae legitimum peritiae testimonium habeant, ex officio designentur; nisi maluerit mulier a duobus medicis ex officio pariter designandis inspici vel id Ordinarius necessarium habuerit.

(40) can. 508, §1 compared with can. 1935, §1

1° Quilibet tamen fidelium semper potest delictum alterius, cuiusvis condicionis, denuntiare ad satisfactionem petendam vel damnum sibi resarciendum vel etiam studio iustitiae ad alicuius scandali vel mali reparationem;

§1. Quilibet tamen fidelium semper potest delictum alterius denuntiare ad satisfactionem petendam vel damnum sibi resarciendum, vel etiam studio iustitiae ad alicuius scandali vel mali reparationem.

(41) can. 508, §1, n. 2° compared with can. 1652, 3°

Iure, de quo in n. 1°, fruitur religiosus quoque, etiam adversus Superiores.

Si contra ipsum Superiorem denuntiationem instituere velint.

(42) cann. 529–536

can. 529

Salvis praescriptis canonum huius tertiae partis, in iudicio

criminali serventur, nisi rei natura obstet, can. 226–452 de iudicio contentioso.

can. 530

Causa criminalis introducitur per accusationis libellum a promotore iustitiae conficiendum secundum normas in can. 531 statutas.

can. 531

Libellus a promotore iustitiae conficiendus indicare debet:

1° Facta quibus constat delictum;

2° Speciem delicti, allegatis canonibus qui eo pertinent;

3° Probationes ex quibus constat de accusati parte in delicto;

4° Facta quae constituunt circumstantias aggravantes vel minuentes delictum;

5° Poenas in quas accusatus incurrerit iuxta canones indicandos;

6° *Positiones* facti seu articuli super quibus interrogandi sunt tum reus iuxta interrogatoria libello adnectenda, tum testes iuxta interrogatoria tempore opportuno exhibenda;

7° Formulas propositas ad dubia, ut dicitur, *concordanda.*

can. 532

§1. Tribunal, postquam viderit rem esse suae competentiae, debet quantocius libellum aut

admittere aut reiicere, adiectis in hoc altero casu reiectionis causis.

§2. Libellus reiiciendus est quoties constat actioni criminali locum non esse ex eo quod v.g. factum imputatum, etsi verum, crimen haud constituat, vel propter mortem rei, actionis praescriptionem, querelae in casu necessariae defectum.

§3. Si tribunalis decreto libellus reiectus fuerit ob vitia quae emendari possunt, promotor iustitiae novum libellum rite confectum debet eidem tribunali denuo exhibere; quod si tribunal emendatum libellum reiecerit, novae reiectionis rationes exponere debet.

can. 533

Adversus libelli reiectionem, integrum semper est promotori iustitiae intra tempus utile decem dierum recursum interponere ad superius tribunal. A quo, audito illius instantiae promotore iustitiae, quaestio reiectionis expeditissime est definienda.

can. 534

Si tribunal continuo mense ab exhibito libello decretum non ediderit, quo libellum admittit aut reicit, servetur praescriptum can. 232.

can. 535

§1. Libello admisso, locus est rei citationi.

§2. Citatio conficienda et denuntianda est ad normam can. 237–245.

§3. Citatione legitime peracta, res desinit esse integra ad normam can. 247, et licet promotor iustitiae ab accusatione recedat, tribunal ad ulteriora procedere et poenas imputato interrogare potest vel eundem in poenas incurrisse declarare.

can. 536

Iudex reum citans debet eum invitare ad eligendum advocatum intra definitum tempus; quo inutiliter elapso, idem iudex ex officio advocatum reo constituat.

(43) can. 537 compared with can. 1956

In delictis gravioribus, si Hierarcha censeat non sine fidelium offensione imputatum ministrare sacris aut officio seu munere aliquo spirituali ecclesiastico vel pio fungi aut ad sacram communionem publice accedere, potest, audito promotore iustitiae, eum a sacro ministerio, ab illorum officiorum seu munerum exercitio, vel etiam a sacra communione publice sumenda prohibere.

In delictis gravioribus, si Ordinarius censeat cum fidelium offensione imputatum ministrare sacris aut officio aliquo spirituali ecclesiastico vel pio fungi aut ad Sacram Synaxim publice accedere, potest, audito promotore iustitiae, eum a sacro ministerio, ab illorum officiorum exercitio, vel etiam a publica sacrae Synaxis participatione prohibere ad normam can. 2222, §2.

(44) can. 538 compared with can. 1957

Pariter si iudex censeat accusatum posse testibus timorem incutere aut eos subornare, aut alio modo iustitiae cursum impedire, potest, audito promotore iustitiae, decreto suo mandare, ut ille ad tempus deserat oppidum vel paroeciam, vel etiam ut secedat in praefinitum locum ibique sub peculiari vigilantia maneat.

Pariter si iudex censeat accusatum posse testibus timorem incutere aut eos subornare, aut alio modo iustitiae cursum impedire, potest, audito promotore iustitiae, decreto suo mandare, ut ille ad tempus deserat oppidum vel paroeciam quandam, vel etiam ut secedat in praefinitum locum ibique sub peculiari vigilantia maneat.

(45) can. 539 compared with can. 1958

Decreta de quibus in can. 537, 538, ferri nequeunt, nisi reo citato et comparente vel contumace, sive post post primam eius auditionem seu constitutum, sive postea in decursu iudicii; et contra eadem non datur iuris remedium.

Decreta in quibus in can. 1956, 1957 ferri nequeunt, nisi reo citato et comparente vel contumace, sive post primam eius auditionem seu constitutum, sive postea in decursu processus; et contra eadem non datur iuris remedium.

(46) *cann. 540–558*

can. 540

Obiectum seu materia iudicii criminalis statuitur in ipsa litis contestatione qua iudex pro tribunali sedens die in citatione assignato libellum promotoris iustitiae accusato et partibus laesis, si quae sint, significat.

can. 541

In sessione litis contestationis concordari poterunt, quatenus iudex id expedire censuerit, dubia circa ipsam quaestionem principalem.

can. 542

Si reus in sessione litis contestationis crimen confiteatur, non ideo causa finitur. Potest tamen iudex, pro suo prudenti arbitrio, liti finem imponere in casibus in quibus admittitur correptio.

can. 543

Si die et hora contestandae liti praestituta reus non comparuerit nec iustam absentiae excusationem allegaverit contumax declaretur et procedatur ad ulteriora.

can. 544

Si reus exceptiones praeiudiciales in sessione litis contestationis deduxerit, v.g. de extinctione actionis criminalis, de incompetentia iudicis, de re iudicata, de parte laesa excludenda, etc., locus est causae incidenti ad normam can. 361 et seqq. pertractandae et definiendae.

can. 545

§1. Lite contestata, causa incidens, si qua oriatur, proponi debet coram tribunali ad normam can. 361 et seqq.

§2. Causa incidens, nisi propter rei momentum aliud iudici videatur, una cum principali definienda est.

§3. Causa incidens, quae pendente instructoria proponitur, etsi pertractetur ante causam

principalem, instructoriae evolutionem minime suspendit, nisi tribunal id expresse, gravissima ex ratione, decreverit. Causa autem incidens per memorialia, brevibus assignatis terminis, disceptetur; eam tribunal per decretum solvat, nisi decisio talis sit ut iudicio criminali finem imponat; quo in casu edatur sententia.

can. 546

§1. Contra tribunalis sententias vel decreta interlocutoria, etsi habeant vim sententiae definitivae, non datur separata appellatio; sed appellatio proponenda est una cum appellatione a sententia definitiva, nisi tribunal, attento questionis momento, separatam appellationem in ipso decreto vel sententia interlocutoria fieri posse admiserit.

§2. Tribunal, ante sententiam definitivam vel una cum sententia definitiva, sententias vel decreta quaelibet interlocutoria corrigere, emendare aut revocare, auditis partibus, potest.

can. 547

§1. Praeter reum citanda semper est pars cui ex delicto laesio iuridica est illata, quaeque ius habet exercendi actionem civilem.

§2. Etsi citatio partis laesae fuerit omissa, vel ipsa, non obstante legitima citatione, non

comparuerit, ius tamen habet interveniendi in iudicium sive primae instantiae sive appellationis, usque ad conclusionem in causa, servato praescripto can. 376, §3.

§3. Interventus partis laesae admitti nequit si causa de actione civili ex delicto orta iam soluta sit per sententiam quae in rem iudicatam transierit.

§4. Proposita per legitimam citationem actione civili ex iniuria vel diffamatione, ius denuntiationis vel querelae partis laesae perimitur.

§5. Firmo can. 511, §2, a querela ex iniuria vel diffamatione pars laesa resilire semper potest, accedente tamen imputati consensu. Quo in casu partes integram sibi reservare possunt actionem civilem damnorum.

can. 548

Pendente vero iudicio criminali, iudicium contentiosum de actione ex delicto orta suspenditur, usque ad definitionem causae criminalis; integrum tamen est parti laesae actionem civilem in iudicio criminali exercere iuxta can. 547 et 551.

can. 549

Sententia in iudicio criminali edita, etsi de actione civili expresse non decreverit et absente parte laesa fuerit prolata, vim

exserit ad ipsos civiles effectus quod attinet, sive quaeritur factum ipsum non exstiterit necne, sive quaeritur re rei imputabilitate.

can. 550

Quod si exsistentia delicti ex quaestione quadam de statu personarum pendeat, criminale iudicium, iudicis sententia, suspendatur usque ad definitionem quaestionis de statu in iudicio contentioso pertractandae.

can. 551

Actio civilis in iudicio criminali exercetur a parte laesa per declarationem in actu litis contestationis factam vel per legitimum interventum ad normam can. 547, §2.

can. 552

§1. Quaestio, si oriatur, de parte laesa admittenda, dirimatur ad normam can. 361 et seqq., 545.

§2. Contra decretum vel sententiam qua admittitur exercitium actionis civilis non datur appellatio nisi ad normam can. 546.

§3. Contra decretum vel sententiam quae partis laesae interventum excluserit datur immediata et separata appellatio in devolutivo tantum intra tres dies proponenda, intra decem dies prosequenda, et expeditissime definienda.

can. 553

§1. Pars laesa ad exercitium actionis civilis admissa ius habet proponendi exceptiones et probationes necnon advocatum et procuratorem sibi eligendi uti vera pars in causa, salvo tamen can. 376, §3.

§2. Contra sententiam definitivam quae reum quavis de causa absolverit, pars laesa quae ad exercitium actionis civilis fuerit admissa, quibuslibet iuris remediis frui valet, quamvis promotor iustitiae ab iis abstinuerit, quo in casu iudicium impugnationis actionem contentiosam tantum respicere debet et pertractandum est iuxta normas statutas circa iudicium contentiosum.

can. 554

§1. Pars quae ad normam legis ecclesiasticae vel civilis, iure canonico legitime receptae, respondere debet de damno civili a delinquente patrato ius habet interveniendi ad sua iura tuenda in criminali iudicio.

§2. Pars laesa ius habet instandi ut citetur pars de qua in precedenti paragrapho.

can. 555

§1. Lite contestata locus est instructoriae.

§2. 1° Ad rem ponens intra tres dies eligat instructorem;

2° Instructor, in eadem causa definienda, iudicis officio fungi nequit.

can. 556

A decretis vel praescriptis iudicis instructoris, datur intra tres dies recursus ad tribunal cum effectu devolutivo tantum.

can. 557

Reus regulariter est audiendus cum probationes a promotore iustitiae et a pare laesa propositae iam sint collectae. Iudex autem instructor debet summam probationum reo patefacere ita ut hic novas probationes postulare possit.

can. 558

Tribunalis est aestimare quid valeat confessio rei, utrum in casu vim habeat plenae vel saltem semiplenae probationis, utrum confessio dividi possit necne. Quare etsi reus delictum suum confiteatur, causa minime finitur et tribunal ad ulteriora procedere debet.

(47) can. 559, §1 compared with can. 1744

Iusiurandum de veritate dicenda aut de veritate dictorum nequit accusato deferri.

Iusiurandum de veritate dicenda in causis criminalibus nequit iudex accusato deferre; in contentiosis, quoties bonum publicum in causa est, debet illud a partibus exigere; in aliis, potest pro sua prudentia.

(48) can. 559, §2 compared with can. 1830, §2

Iureiurando suppletorio de quo in can. 352, abstineat iudex.

Sed eodem abstineat iudex tum in causis criminalibus, tum in contentiosis, si de iure vel re magni pretii agatur aut de facto nimii momenti, aut si ius, res, factum non sit proprium personae cui iusiurandum esset deferendum.

(49) cann. 560–576

can. 560

Testium examini interesse possunt, iudice consentiente, partium advocati; reus autem ne admittatur nisi gravissima ex causa.

can. 561

Probationes quae fuerint ab inquisitore collectae ad normam can. 518, confirmandae sunt a testibus et peritis in instructoria, ut iudex ex ipsis suam certitudinem efformare possit; partibus autem semper licet iis uti in discussione causae praesertim ad contradictiones et variationes evincendas.

can. 562

Cum iudex instructor causam satis instructam putaverit, suo decreto id statuat et acta tribunali deferat una cum concluclusionibus.

can. 563

§1. Tribunal, nisi supplementum instructoriae ex officio faciendum iusserit, publicationem actorum decernat, ita ut cum promotor iustitiae tum rei advocatus noscere possint sive acta instructoriae sive iudicis instructoris conclusiones.

§2. Una cum actis instructoriae publicandae sunt probationes quae fuerint ab inquisitore collectae ad normam can. 518.

can. 564

Ex gravissima ratione iudex in publicandis actis decernere potest ut aliqua testimonia eo pacto advocatis communicentur ut nomina testium secreta sub iuramenti sanctitate servent ita ut ne reo quidem patefaciant. Quo in casu partes invitentur ad manifestanda nomina eorum quos sibi infensos vel inimicos habeant et inimicitiae rationes.

can. 565

§1. Publicatis actis, tribunal statuit diem causae definiendae.

§2. Decretum denuntiari debet omnibus partibus saltem decem diebus ante definitionem causae.

can. 566

Quinto saltem die ante causae definitionem, cum promotor iustitiae tum rei advocatus suas scripturas in cancellaria tribunalis deponere debent ut a parte adversa nosci possint.

can. 567

Die definiendae causae assignato habebitur discussio oralis.

can. 568

In discussione orali novae probationes colligi nequeunt.

can. 569

§1. Discussioni adsistunt promotor iustitiae, reus eiusque advocatus, pars laesa et pars de qua in can. 554, earumque advocati.

can. 570

§1. In discussione hic ordo servetur ut primus promotor iustitiae, secunda et tertia, si quae sint, pars laesa et pars de qua in can. 554, earumque advocati, ultimo reus conventus eiusque advocatus loquantur.

§2. Quod si responsionibus sit locus, ultimo semper reus conventus eiusque advocatus ius habent replicandi.

§3. Praesidis est moderari oralem discussionem

can. 571

§1. Discussione absoluta, tribunal sententiam proferat.

§2. Si ex discussione emerserit necessitas novarum probationum colligendarum, tribunal, dilata definitione causae, novas probationes ipsum colligat.

can. 572

Pars dispositiva sententiae statim publicanda est, nisi tribunal gravi de causa decernat decisionem secreto servandam esse usque ad formalem sententiae publicationem, quae non ultra mensem a die definitionis differri potest.

can. 573

Reus contumax appellationem intra terminos iure statutos proponere et prosequi potest neque ulla tenetur obligatione petendi beneficium can. 371.

can. 574

Prudenti iudicio promotoris iustitiae in superiore tribunali committitur prosecutio remedii iuris a promotore iustitiae in inferiore tribunali propositi. Peracta autem legitime partium apud tribunal superius citatione, servetur praescriptum can. 535, §3.

can. 575

Ad exsecutionem privationis beneficii inamovibilis iudex ne procedat contra clericum qui Apostolicam Sedem vel Patriarcham adierit; sed si agatur de beneficio cui adnexa sit animarum cura, Hierarcha provideat per designationem vicarii substituti.

can. 576

Ad aliquid solvendum titulo expensarum iudicialium adigi possunt tantum partes privatae, nisi et ipsae ad normam can. 441–443, eximantur.

(50) can. 1, §3 compared with can. 1933, §1

Delicta quae cadunt sub criminale iudicium sunt delicta quae in foro externo legitime probari possunt.

Delicta quae cadunt sub criminali iudicio sunt delicta publica.

(51) can. 174, §1	compared with	can. 1659, §1
Procurator ne prius a iudice admittatur quam speciale mandatum ad lites scriptum, mandantis subscriptione munitum, et locum, diem, mensem et annum referens, apud tribunal deposuerit.		Procurator ne prius a iudice admittatur quam speciale mandatum ad lites scriptum, etiam in calce ipsius citationis, mandantis subscriptione munitum, et locum, diem, mensem et annum referens, apud tribunal deposuerit.

UNESCO'S *A HISTORY OF MANKIND*

A. C. F. Beales, writing in the London *Tablet,* reported that four British historians declined to participate in the writing of UNESCO'S history of mankind. The historians thus declining he named as Prof. R. H. Tawney, Prof. Arnold Toynbee, Prof. Herbert Butterfield, and Sir Charles Webster. However Mr. Beales insisted that the argument against this history project should not be left to rest simply on a dislike or a distrust of those who are engaged in the work of editing it. "This would suggest," he said, "that the addition of some Catholics and some Buddhists, and so on, to the board would convert a warped project into a balanced one."

"That is fatally superficial," he warned, "since the falsity of the project does not lie in its 'unrepresentativeness" at all, but at a much deeper level, namely, that there are unbridgeable gulfs as to the prior and first question of what history is about". How can men with divergent views on the interpretation of history "write an agreed history of mankind?" "They could do so," he replied, "only to the extent that they should agree to beg the questions that matter most to them, that is, by excluding any all-embracing view of life altogether".

Cases and Studies

ANNOUNCED OR UNANNOUNCED MASSES?

In his last will a testator designated a sum of $1,500.00 for the offering of Masses for the repose of his soul. No closer specification accompanied this request. Now, in the testator's diocese the established offering for an announced low Mass is $1.50, and for an unannounced low Mass $1.00. In the same diocese the people quite generally accommodate their offerings for announced Masses.

Will it be allowable to regard the $1,500.00 bequest as calling for announced Masses?

FRUGILEGUS

Can. 828.—Tot celebrandae et applicandae sunt Missae, quot stipendia etiam exigua data et accepta fuerint.

Can. 830.—Si quis pecuniae summam obtulerit pro Missarum applicatione, non indicans earundem numerum, hic supputetur secundum eleemosynam loci in quo oblator morabatur, nisi aliam fuisse eius intentionem legitime praesumi debeat.

Can. 833.—Praesumitur oblatorem petiisse solam Missae applicationem; si tamen oblator expresse aliquas circumstantias in Missae celebratione servandas determinaverit, sacerdos, eleemosynam acceptans, eius voluntati stare debet.

S. C. Conc., 15 iun. 1928:—I. Utrum in testamentorum interpretatione, in quibus pecuniae summa pro Missarum celebratione relicta sit, nihil autem in testamento dicto de Missarum natura, beneficiariis licet mentem testatoris in Missarum cantatarum favorem interpretare necne?

II. Utrum quando testator pecuniae summam pro Missarum celebratione reliquit, nihil autem in testamento de Missarum numero dicto, beneficiario liceat summam duorum dollariorum pro singulis Missis lectis ex haereditate sumere necne?

S. Congregatio, omnibus mature perpensis, respondit: Ad utrumque NEGATIVE, nisi peculiares circumstantiae contrarium suadere videantur, quo in casu recurrendum erit, pro opportuna interpretatione mentis testatoris, ad hanc Sacram Congregationem. (Private Reply)

In the light of the quoted canons and private reply it appears manifest that whatever interpretation may be needed must deal, not with the plain and unmistakably certain statement of the law, but with the expression and declaration of the testator's mind. The principle of the law stands unchallengeable: the nature and the number of the Masses must accord with the expressed will of the

donor. So it is patently a point of fact—the testator's precise wish—that calls for exploration; once that point of fact is duly established, the corresponding principle of law becomes readily applicable.

In the interest of determining the will of the donor, the lawgiver has invoked several legal presumptions. First of all, in the absence of any positively determining specification on the part of the donor the law bids us assume that the number of Masses to be applied shall accord with the number of stipends offered. Next, when the number of the Masses to be applied has remained unspecified, the proper reckoning thereof shall look to the established offering as it locally obtains. Again, this offering, when made, simply calls for the application of the Mass as long as accompanying details in the celebration thereof are not expressly requested. Thus the lawgiver has seen fit by way of legal presumption to pre-interpret the will of the donor to his own benefit and advantage whenever that will, for lack of closer positive expression, needs to become definitively discovered, and indeed through legitimately conjectural means.

While indeed there may be some validly conjectural basis for the assumption that the testator's will for announced Masses followed the established pattern or general practice of the community, yet, as a simply human presumption it must bow to the lawgiver's legal presumption that this accompanying factor would have been asked for in the testator's request had he desired to have it so. The lawgiver does not assume that the testator was willing to forego such benefits as were clearly within his lawful and commendable reach; rather, he assumes that the donor wants to derive every possible spiritual benefit through his offering, for instance, the increased number of Masses in his behalf, as long as the donor has not positively chosen to divert a part of his offering to some other laudable purpose, for instance, the enhancement of the offered stipend.[1]

It is the positively expressed will or the presumptively derived intention of the donor that governs the decision to be made regarding the nature and the number of the Masses to be applied. There is no room in the law for the acceptance of a purely interpretative

[1] A similar line of reasoning may be noted in an earlier solution of a similar case, as presented in "High Mass or Low Mass?" The Jurist, II (1942), 375–379.

intention as dictating the kind of Mass and the number of Masses when the testator has failed to give a positive expression of his will. His will, then, must be measured in accord with the lawgiver's own legally established presumptions in the case at hand. The quoted reply of the Sacred Congregation of the Council, so evidently based on the principles inherent in the law itself, furnishes ample demonstration on a parity basis that, just as sung Masses may not allowably be substituted for low Masses, so also the announced Masses, which yield an increased stipend, cannot permissibly be substituted for unannounced Masses, for these latter, quite within the framework of the lawgiver's officially invoked presumptions, represent the acknowledged will of the testator.

TWO-WAY APPEALS IN SUMMARY PROCEDURE?

Upon the hearing of a matrimonial cause according to the summary procedure outlined in canons 1990 ff., a party who feels aggrieved with the verdict which reads: *Non constare de nullitate huius matrimonii* is seeking redress. Can the party seek this redress by way of appeal to a higher court, which like the first will employ the summary procedure for rendering its verdict, or must the party, in view of the attending uncertainties which barred a verdict of *constare de nullitate,* resort to a hearing in a collegiate court?

CONCURSATOR

S. C. de Sacramentis, instr., 15 aug. 1936, art. 226: Quoties agatur de casu excepto ad normam can. 1990, officialis, auditis coniugibus, si comparuerint, et perpensis rebus, videat an de impedimenti existentia seu de nullitatis causa ex certo et authentico documento, quod nulli contradictioni obnoxium sit, constet. De quo si sibi videatur constare, necnon pari certitudine vel alio legitimo modo (Comm. Pont. 16 iun. 1931, ad I) appareat dispensationem concessam non fuisse, rem Ordinario deferat.

Art. 227—§ 1. Ordinarius, iudicem agens, citatis semper partibus iisque auditis, voto etiam exquisito defensoris vinculi necnon promotoris iustitiae, si iste matrimonium accusaverit vel ipsum Ordinarius audire censuerit, potest iuxta suum prudens iudicium matrimonii nullitatem sententia declarare, rationibus breviter adductis in iure et in facto.

§ 2. Quod si Ordinarius iudicaverit non omnia concurrere quae requiruntur vi canonis 1990, ut de nullitate matrimonii tamquam de casu excepto agere queat, causam remittat ad tribunal dioecesanum, quod per viam ordinariam procedat . . . .

Art. 229—§ 1. Adversus istam Ordinarii . . . sententiam, nullitatis matrimonii declaratoriam, defensor vinculi, ad normam can. 1991, idest, si prudenter existimaverit impedimentum non esse certum aut dispensationem super eodem probabiliter intercessisse, provocare tenetur ad tribunal secundae instantiae, cui acta sunt transmittenda, quodque scripto monendum est agi de casu excepto vi can. 1990.

§ 2. Idem ius competit sive promotori iustitiae, si interfuerit, sive parti, quae praefata sententia se gravatam senserit.

Art. 230—Tribunal secundae instantiae definiat, eodem modo ac in art. 227, utrum sententia sit confirmanda, an potius procedendum sit ad ordinarium tramitem iuris; quo in casu acta remittat ad tribunal primae instantiae (cfr. can. 1992).

In reply to the foregoing query one may rightly abstract from the circumstances that occasioned the employment of the so-called summary procedure in the case at hand. The Holy Office has given various replies and the Pontifical Interpretation Commission has furnished repeated authentic interpretations which help to clear up many difficulties connected with the use of the procedure outlined in canons 1990–1992.[1] The particular question is this: Is redress open to the aggrieved party regardless of the positive or negative character of the sentence rendered by the ordinary?

It is, first of all, to be remembered that the procedure as outlined in canons 1990 ff. is made available only under restrictive conditions. When the postulated conditions are not verified, then the hearing must proceed according to the normal judicial procedure. The decision to be made rests with the ordinary, who can and must remit the matter for a formal hearing in a judicial trial whenever he judges that certainty is not derivable, either regarding the existence of the matrimonial impediment itself, or regarding the later non-granting of a dispensation from it. Now, though the ordinary feels possessed of the postulated certainty, so that he can and does render a verdict of *constare de nullitate huius matrimonii*, it remains the right and the duty of the defender of the bond to appeal the case for a hearing in the next higher court whenever he prudently feels that the postulated certainty is lacking.

The court of appeal, being properly forewarned in writing that the summary procedure has been employed, will then decide whether the sentence as rendered is to be confirmed, or whether the hearing is to proceed in the normal judicial manner before a collegiate court. In the latter event the continued employment of the summary procedure becomes ruled out. Just as the ordinary in the

[1] Cf. Doheny, *Practical Manual for Marriage Cases* (2. ed., Milwaukee: Bruce, 1947), pp. 276–283, where these replies and interpretations are all set down in line with the order that the sequence of the canons in the Code calls for.

court of first instance can call for the lengthier formal procedure, so can the court of second instance, whenever it is felt that the summary procedure is not warranted, for the reason namely that the needed certainty cannot be achieved through the presented documents or the other means employable for the gaining of certainty.

An existing lack of conviction on the part of the ordinary, in first instance, or on the part of the appeal court, in second instance, suffices to call for the lengthier formal procedure in the hearing. If the conviction of certainty is to be established, then it must come, not by way of a rehearing under appeal, but by way of such testimony as can be introduced in a formal trial for the achieving of moral certainty on the side of the court.

The very structure of the summary procedure is such that a satisfying certainty is seen derivable from the existing documents and other equal means of proof. As long as this certainty is lacking, it is in a formal trial that one must seek the potential means for gaining the certainty which the summary procedure could not marshal. In line with this, one can readily understand why Article 229 of the 1936 Instruction adverts exclusively to a sentence which has declared the marriage to be null and void when it treats of the possible appeal that may be invoked, either by the defender of the bond, or on occasion by the promoter of justice, or by the aggrieved party.

To leave room for a party to invoke an appeal against a sentence that reflects the ordinary's lack of possessing certainty, namely, that the existing impediment has been removed by way of a dispensation, would be to allow for the use of the summary procedure under circumstances when its use is directly precluded by the law. On the other hand, to permit the making of an appeal against a sentence which acknowledges the postulated possession of certainty on the part of the ordinary reflects but an added safeguard in the gaining of a certainty that prevails successfully in the face of every legitimate challenge.

CLEMENT V. BASTNAGEL

THE CATHOLIC UNIVERSITY OF AMERICA

PUBLIC OPINION REGARDING MARRIED STATUS

A woman whose father was a Catholic was baptized a Protestant when she was twelve years old. She was not, according to her own statement, baptized a Catholic. At the age of eighteen she commenced cohabiting with a non-Catholic man on his promise to marry her. He constantly postponed complying with this promise until she ultimately left him. All her relatives thought she was married to him. He himself has disappeared and cannot be found. Is her sole statement sufficient to establish the fact that marital consent did not accompany her cohabitation with the man?

PAUXILLUM

On the supposition that the Protestant baptism of the woman was valid, she would not be bound to observe the formalities imposed by the secular law. Even if the baptism was not valid, she would be able to contract a valid marriage in a state which recognized common law marriages, *i.e.*, marriages contracted by the mere exchange of marital consent without further formalities. As to canon law, as a baptized non-Catholic she would be bound, for the *lawful* contracting of marriage, to express her consent in words in virtue of canon 1088, § 2; but the marriage would be valid even if the consent were given in some other fashion, provided it was given as true matrimonial consent. What has been said of the woman applies also to the man, if he was, as is stated, a non-Catholic, with due distinctions made for the cases in which he was baptized and that in which he was unbaptized. Of course, if both were baptized, a valid marriage contracted by them would constitute a sacramental marriage as well.

An attempt should be made to clear up the doubt involved in the case through an inspection of the secular and non-Catholic church marriage records in the place in which the parties lived together. Indeed, it is even possible that the Catholic church record might contain the required evidence or that there might be a record of a dispensation in the Chancery archives. For it it not beyond the realm of possibility that the man may have been a Catholic or even that the woman returned to the faith of her father prior to the period in which she alleges that she lived with the man.

If what the woman says is true, there was no marriage. That being so, there is no marriage to which the favor of the law can be extended in accord with the principle of canon 1014. On the other hand, her relatives believed she was married. From the statement

of the case it seems indicated that they assumed this to be so and that no one of them witnessed the marriage or had more than hearsay information on which to base the opinion that became common among them. For if any positive evidence were available among the relatives it would have to be used as a point of departure for further investigation of the reason for the relatives' belief. Now if this reputation is to be accepted, the marriage would be in possession and as such entitled to the favor of canon 1014. The application of canon 1014 to the given case is itself dependent upon the acceptance of the statement of the woman, on the one hand, or of her relatives, on the other. As opposed to each other, the value of the respective opinions is important.

It is true, accusations that are false and hostile can assert the existence of a former marriage in order to prevent a person from entering into a marital union. In a case in which there is no probability of the existence of such a marriage bond and in which only the word of the denouncer supports the charge, the burden of proof assuredly rests upon the latter.

But in the given case as stated in the question proposed above there seems to be sufficient probability that a marriage occurred to place the burden of proof upon the woman. In other words, she must establish that her cohabitation with the man did not involve marital consent. And it seems clear that her unsupported word is not adequate to do this.

COLLEGIATE TRIBUNAL'S RIGHT TO ACCEPT A PETITION

A difference of opinion has arisen among us in relation to the following procedure. Eight synodal judges, two defenders of the bond, the promoter of justice, and the secretary meet with our Officialis from time to time to consider the matrimonial causes that are presented for adjudication. The causes are read before the entire group and then discussed. The Officialis then asks for a motion to accept or reject the cause and for a vote on the motion—only the judges moving and voting. If the cause is thus accepted, the Officialis only then appoints the "*turnus*".

Does this fulfill or violate the Code in its direction that the petition is to be accepted or rejected by the tribunal acting "*collegialiter*"? In other words, is it permitted for only the Officialis and two judges, previously appointed as the "*turnus*", to examine and accept or reject the *libellus*, or may the procedure outlined above also be considered justified?

SCRUTATOR

There is no doubt that this manner of proceeding does not comply with the requirement of the Code that the tribunal should act as a college. The tribunal for a given matrimonial cause does not consist of the entire judicial personnel of a given diocese. If this were so, it would be futile to speak of the appointment of the synodal judges by turns. For this reason, if all the synodal judges participate in the acceptance or the rejection of a cause, it is not correct to say that the tribunal has accepted or rejected it.[1]

As to the causes that are accepted one might well conclude that when the collegiate tribunal, upon its appointment, proceeds with the cause it automatically ratifies the acceptance previously given by the entire body of synodal judges. It would be difficult to assume that if two of the synodal judges appointed to serve by turn were opposed to the acceptance of the cause, they would in spite of their opposition proceed to the citation of the parties and to the *contestatio litis*. Indeed, since there seems to be no constraint imposed upon the subsequently appointed tribunal requiring it to accept the cause already accepted by the entire panel of judges, one might perhaps conclude that the action of the latter was in fact of a consultive character only. But this conclusion is, of course, confronted by the fact that the collegiate tribunal, after its appointment, merely accepts the action of the preceding panel without any further independent action of its own. But in spite of the lack of formal action on the part of the subsequently established tribunal, one can hardly say that it did not accept the cause. If it did not, why did it proceed to further action? On the other hand, formal action should be taken by the collegiate tribunal and the record of it should appear in the acts of the process.

What of the causes that are rejected? One may say that if nine judges decide a cause has no merit they are more likely to be correct than if only three so decide. But the vote may easily be five to four. In that case the importance of the views of a great number is discounted since almost as many would favor the acceptance

[1] Can. 1577, § 1: Tribunal collegiale collegialiter procedere debet, et ad maiorem suffragiorum partem sententias ferre.

Can. 1709, § 1: Iudex vel tribunal, postquam viderit et rem esse suae competentiae et actori legitimam personam esse standi in iudicio, debet quantocius libellum aut admittere aut reiicere, adiectis in hoc altero casu reiectionis causis.

of the cause as would favor its rejection. One might respond that there is also a margin of only one vote if two judges vote for rejection and one votes for acceptance and that, further, in the latter case only two judges favor rejection, while, in a five–four vote, five judges favor it. In spite of this argument from the weight of numbers, it is apparent that of the four judges who favor acceptance in a five–four devision (or even of three judges in a six–three decision) three of them might have constituted the tribunal appointed to pass on the acceptance or the rejection of the cause, and that, had this happened, the cause would have been accepted by a collegiate tribunal and would have proceeded to some ultimate production of evidence. It seems, therefore, that a petitioner whose cause was rejected by the entire panel would not be deprived of his right to present the cause before a canonically established collegiate tribunal.

INVESTMENT OF GREGORIAN MASS STIPENDS

A clerical exempt religious house accepts stipends for Gregorian Masses to be said for the donor after his death. If this is repeated, a substantial sum is eventually acquired. Is there any prohibition against the safe investment of this stipend money? Or is such investment against the prescription of canon 827 which absolutely forbids all negotiation of any kind in connection with Mass stipends? Since the obligation to say such Masses does not begin until after the death of the donor, I should think that the acceptance itself of such Mass obligations would not be contrary to canon 835 which forbids a priest to take more intentions than he can satisfy within a year.

CRESCENDO

In regard to the investment of stipends for Gregorian Masses that are to be celebrated only after the donor's death, there seems to be no prohibition forbidding it. The prescription of canon 827 [1] forbids trading (*negotiatio*) in Mass stipends. But investment is not trading, as is apparent from the fact that the investment of funds is not forbidden a cleric whereas trading even with his own funds is forbidden to him in virtue of canon 142.[2] If one who did not celebrate the Mass represented by a Mass stipend derived a

[1] Can. 827: A stipe Missarum quaelibet etiam species negotiationis vel mercaturae omnino arceatur.

[2] Can. 142: Prohibentur clerici per se vel per alios negotiationem aut mercaturam exercere sive in propriam sive in aliorum utilitatem.

profit from handling that stipend, he would violate canon 827 inasmuch as his profit represents a gain made through trade.

But when a donor gives the stipends for Gregorian Masses to be said only after his death he not only authorizes the postponement of the celebration of the Masses until that time, and thus exonerates the celebrant from the obligation of celebrating the Masses within a year as canon 835 [3] prescribes, but he also implicitly consents to the investment of the stipends. However, his predominant intention demands that the Gregorian series be said even should the principal sum be diminished through an unwise choice of securities. Moreover, should the stipends be transferred all the profit derived from the investment must be transferred with the principal sum. It is the priest who celebrates the Masses who is entitled to all the benefits intended by the donor through his offering of the stipends in advance of his death. In the case of a religious house which is entitled to the stipends for the Masses celebrated by the religious priests assigned to that house, the house is entitled to all these benefits. But should the stipends be given to a secular priest or to another religious house, the benefits derived from investment would have to be given to the recipients of the stipends. The retention of this income would not be justified under canon 840, § 2,[4] because the sum given for the Gregorian Masses is not a founded endowment carrying the obligation of celebrating Masses. The stipends offered for Gregorian Masses are manual stipends and any retention of profit derived through the investment of the sum would involve the trading that is forbidden by canon 827.

It is, indeed, a procedure fraught with responsibility to accept such stipends, not to speak of the investment of them. Careful bookkeeping is of prime importance to insure that the obligations imposed are carefully carried out. It does seem the better part of

[3] Can. 835: Nemini licet tot Missarum onera per se celebrandarum recipere quibus intra annum satisfacere nequeat.

[4] Can. 840, § 1: Qui Missarum stipes manuales ad alios transmittit, debet acceptas integras transmittere, nisi aut oblator expresse permittat aliquid retinere, aut certo constet excessum supra taxam dioecesanam datum fuisse intuitu personae.

§ 2: In Missis ad instar manualium, nisi obstet mens fundatoris, legitime retinetur excessus et satis est remittere solam eleemosynam manualem dioecesis in qua Missa celebratur, si pinguis eleemosyna locum pro parte teneat dotis beneficii aut causae piae.

wisdom to suggest to the faithful who wish the Gregorian Masses said for them after their death that they make provision by specific mention of this intention in their wills.

TESTIMONIAL LETTERS FOR THE UNBAPTIZED

Is it necessary to obtain testimonial letters for an applicant for the religious priesthood who is a convert for that period of time that followed his fourteenth birthday but preceded his baptism?

DEFERENS

The question is assumed to refer to the requirement of canon 993, 4°, which is pertinent in the case of religious who are not exempt as it is in the case of aspirants to the secular priesthood. The requirement thus imposed seems not to be satisfied by the testimonial letters presented by the candidate prior to his admission into the novitiate in accordance with the demand of canon 544, § 2. For the latter requisite provides for letters from local Ordinaries of dioceses in which the candidate has dwelt for a morally continuous year, whereas canon 993, 4°, demands letters from local Ordinaries of dioceses in which the candidate has dwelt for six months.

The fact that the candidate was not baptized during the time that he spent six months in a given diocese seems not to exonerate him from the obligation of presenting the testimonial letters. The purpose served by them is not restricted to discovering the existence of irregularities *ex delicto*. Even if it were so restricted, one could not immediately conclude that the letters were not needed in the case of one who was not baptized at the time he dwelt in the respective diocese. Since the testimonial letters are meant to guard against any unfitness or unworthiness or disqualification in the candidate, it seems that they are needed in the case even of one who was not baptized at the time of his dwelling in the diocese involved.[1]

JEROME D. HANNAN

THE CATHOLIC UNIVERSITY OF AMERICA

[1] Cf. Quinn, *Documents Required for the Reception of Orders*, The Catholic University of America Canon Law Studies, n. 266 (Washington, D. C.: The Catholic University of America Press, 1948), pp. 108, 155-56; Coronata, *Institutiones Iuris Canonici de Sacramentis* (3 vols., Taurini-Romae: Marietti, 1943-46), II, n. 178.

Decrees and Decisions

CANONICAL

SACRA CONGREGATIO DE RELIGIOSIS

Decretum [1]

APUD S. CONGREGATIONEM DE RELIGIOSIS "STUDIUM" CONSTITUITUR

"Quod numquam ecclesiasticarum rerum memoria factum esse recenset, nunc primum Sodalitates, in quas qui cooptati sunt suae veluti metam evangelicam absolutionem perfectionemque sibi praestituunt, in tam celebres coetus coaluerunt, quemadmodum postremis hisce diebus contigit, ut de communibus utilitatibus cogitata librarent consilia. Quod ut efficeretur, iudicio Nostro matura tempora omnino requirebant" (Pius XII, Allocutio diei 8 dec. 1950 Conventui generali ex universis religiosis Ordinibus, Congregationibus ac Societatibus Institutisque saecularibus, Romae habito [2]).

Solemnis ille Conventus, qui *Congressus de Statibus perfectionis* appellatus fuit, vota quaedam ad nostris temporibus accomodatam renovationem inducendam ordinata, emisit et S. Congregationi de Religiosis exhibuit. Haec vota S. Congregatio libenter excepit, eaque peritis adhuc examinanda tradidit qui modum ea exsecutioni mandandi suggererent et viam qua incedendum erit demonstrarent. Inter ea vero quae communi omnium plausu recepta fuerunt et enixe S. Congregationi commendata ut ipsa SSmo D. Nostro pro approbatione exhibere dignaretur, illud eminet quod ita breviter perstringi potest:

"Ad exemplum *Studiorum,* pontifica auctoritate apud aliqua Romanae Curiae dicasteria institutorum,—quae maximo cum fructu alumnos in rebus propriis solide et practice instruunt atque ad officia seu munera correlata iure riteque praeparant,—*Schola practica* rationi vitae religiosae plene respondens apud S. C. de Religiosis legitime instituatur. Ipsa ita ordinari deberet, ut, tam tyrones qui

[1] *AAS,* XLIII (1951), 806.

[2] *AAS,* XLIII (1951), 27.

in Urbe studiis academicis aliisque superioribus vel specialibus incumbunt, quam illi qui negotiis agendis tractandisque, diversis educationis ministeriis, officiis et muneribus regiminis destinantur, secure et practice instrui exercerique possint: 1) circa S. Congregationis competentiam, stylum, praxim, procedendi rationem, et circa suorum documentorum, actorum, formularum vim ac potestatem; 2) circa S. Congregationis iurisprudentiam, circa Codicis iurisque vigentis usualem interpretationem securamque applicationem; 3) denique circa Religionum, Societatum, Institutorumque ius privatum comparatum, ut optima quaeque a S. Congregatione prolata ob oculos ponantur in illis omnibus quae ad statum et constitutionem, ad educationem religiosam clericalem apostolicam, ad regimen, ad ministeriorum demum exercitium spectant."

Haec profecto S. Congregatio multum conferre autumavit auspicatae renovationi procurandae huius *Studii* seu *Scholae practicae* creatio; proindeque in Audientia diei 8 Ianuarii currentis anni Emus tunc Card. Praefectus Clemens Micara Religiosorum Conventus vota et desideria Ssmo praesentavit, Qui eisdem benigne annuere dignatus est.

Quapropter, vi praesentis Decreti apud S. Congregationem de Religiosis *Studium* constituitur, quod omnibus clericis sive religiosis sive saecularibus patebit. Cursus lectionum et exercitationum spatio biennii absolvetur, quo rite peracto speciale diploma conferri poterit, cui si casus ferat, speciales effectus attribui valebunt. Candidati haec documenta exhibebunt: Religiosi licentiam proprii Superioris Generalis; saeculares tum licentiam proprii Ordinarii tum " Nihil obstat " Vicarii Urbis; omnes autem peculiare aliquod publicum tesimonium specialis in scientiis sacris competentiae vel studiorum ad eam sibi comparandam.

Haec infrascriptus Secretarius S. Congregationis in Audientia diei 23 Octobris 1951 SSmo D. N. Pio Pp. XII retulit, Qui ea approbare dignatus est et publici iuris fieri mandavit.

Contrariis quibuslibet non obstantibus.

Datum Romae, die 23 Octobris a. 1951.

L. ✠ S.

Arcadius Larraona, C.M.F., *Secretarius*

Ioannes B. Scapinelli, *Subsecretarius*

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SACRA PAENITENTIARIA APOSTOLICA

(Officium de Indulgentiis)

ORATIO A SODALIBUS ACTIONIS CATHOLICAE RECITANDA [1]

Domine Iesu, qui nobis contulisti honorem, ut apostolatui hierarchico, licet tenuem, auxiliatricem operam demus, Tu qui caelestem Patrem rogasti, non ut tollat nos de mundo, sed ut servet nos a malo, copiosum concede nobis lumen et robur tuum, quo in nobis spiritum tenebrarum et peccati vincamus, ut—officiorum nostrorum memores, in bonis operibus perseverantes, causae tuae studio inflammati—impensis viribus recti exempli, precum, sollertiae et supernaturalis vitae, digniores nos cotidie evadamus munere, quod exsequimur, aptiores ad stabiliendum et provehendum inter homines, fratres nostros, regnum tuum iustitiae, amoris et pacis (*Pius Pp. XII*).

Die 17 Novembris 1951

Ssmus D. N. Pius div. Prov. Pp. XII, in Audientia infra scripto Cardinali Paenitentiario Maiori concessa, benigne tribuere dignatus est indulgentias quae sequuntur: *partialem quingentorum dierum* a sodalibus Actionis Catholicae saltem corde contrito lucrandam quoties supra relatam orationem devote recitaverint; *plenariam*, suetis conditionibus, ab ipsis acquirendam, si quotidie per integrum mensem eamdem recitationem pie persolverint. Praesenti in perpetuum valituro absque ulla Apostolicarum Litterarum in forma brevi expeditione.

Contrariis non obstantibus quibuslibet.

N. CARD. CANALI, *Paenitentiarius Maior*

L. ✠ S.

S. LUZIO, *Regens*

* * * * *

[1] *AAS*, XLIII (1951), 871.

[2] On the same day, a plenary indulgence was granted for the recitation of a special prayer in honor of the Assumption if recited daily for a month, as well as a partial indulgence of three years for each recitation; cf. *AAS, ibid.*, p. 870.

INDULT AFFECTING EUCHARISTIC FAST OF RELIGIOUS

No. 57/52

February 5, 1952

Your Excellency:

I am pleased to announce that our Holy Father, in audience of January 15, 1952, prorogued for another three years the faculty (No. 6660/48) which empowers the Most Reverend Ordinaries of the United States to dispense religious from the Eucharistic fast as they do the hospitalized and sick priests.

This faculty will continue in effect until January 15, 1955 inclusive.

Notification of the grant was first made to Your Excellency in my letter of June 15, 1949 and for your convenience I am enclosing a copy of the original rescript.

With cordial regards and best wishes, I remain

Sincerely yours in Christ,

✠ A. G. Cicognani
Archbishop of Laodicea
Apostolic Delegate

No. 6660/48

Your Holiness:

The Most Reverend Ordinaries of the United States humbly request that their faculties to dispense the hospitalized and sick priests from the Eucharistic fast for the reception of Holy Communion be extended to include the members of religious communities of men and women.

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Ex Audientia Ssmi diei 25 Octobris 1948.

Ssmus Dominus Noster Pius PP. XII, referente infrascripto Cardinali Praefecto Sacrae Congregationis Negotiis Religiosorum Sodalium praepositae, benigne adnuit pro gratia extendendi Rescriptum No. 1975/46, diei 4 Aprilis 1946, S. Congregationis de disciplina Sacramentorum circa dispensationem a jejunio eucharistico, ad omnes Communitates Religiosas virorum et mulierum etiam ad

illos qui more vitae communis vivunt in Statibus Foederatis Americae, ad triennium.

Non obstantibus quibuslibet.

Datum Romae, die, mense et anno ut supra.

LUDOVICUS CARD. LAVITRANO
Praef.

N.B. The rescript here mentioned was communicated to the Most Reverend Ordinaries by circular letter No. 472/41 of May 17, 1946.

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INDULT AFFECTING ORDINATION DAYS

No. 249/40

March 17, 1952

Your Excellency:

In virtue of special faculties granted by His Holiness, Pope Pius the Twelfth, the Sacred Congregation for the Discipline of the Sacraments has renewed *ad aliud triennium* the faculty " qua sacrae Ordinationes haberi possint extra tempora a iure statuta, scilicet diebus festis ritus duplicis primae vel secundae classis, quamvis non de praecepto, necnon ultimis sabbatis Maii et duobus primis sabbatis Junii, exeunte anno scholari . . . servatis de iure servandis, praesertim Instructione S. Congregationis de Sacramentis diei 27 Decembris 1930 de scrutinio."

This grant will be in force until February 20, 1955 in favor of all the local Ordinaries of the United States.

In addition I am pleased to notify Your Excellency that the Holy See has also given the Most Reverend Bishops the faculty to confer Sacred Orders on each of the Saturdays of May and June for this year. This special grant is therefore limited to 1952 and the Ordinaries who take advantage of it are asked to report the fact to the Apostolic Delegation.

With cordial regards and best wishes, I remain

Sincerely yours in Christ,

✠ A. G. CICOGNANI
Archbishop of Laodicea
Apostolic Delegate

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CIVIL HOLIDAY DISPENSATIONS

No. 230/36

April 10, 1952

Your Excellency:

I am pleased to inform you that the Sacred Congregation of the Council, by letter No. 1448/52 of March 25, 1952, has extended for another period of five years the faculty of the Most Reverend Ordinaries of this country to dispense from the laws of fast and/or abstinence on civil holidays.

This new concession is effective until and including March 25, 1957.

The relative tax of Three Dollars may be transmitted to the Holy See through this office.

With cordial regards and best wishes, I remain

Sincerely yours in Christ,

✠ A. G. Cicognani
Archbishop of Laodicea
Apostolic Delegate

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CHANGES IN NAMES OF DIOCESES

The Sacred Consistorial Congregation has provided for the change of the name of the Diocese of Baker City to that of the Diocese of Baker. Similarly the name of the Diocese of Salt Lake has been changed to that of Salt Lake City.

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HOLY SATURDAY LITURGY

The Sacred Congregation of Rites has authorized a three-year extension of the faculty permitting the transferring of the Liturgy of Holy Saturday from the morning to the evening hours. In issuing this decree, the Sacred Congregation has provided rubrics that will be available to a priest who functions by himself with the assistance of specially prepared ministers. The rite normally should commence at midnight; however, for serious public reasons Ordinaries are authorized to move the hour so that the service will commence earlier but not before eight o'clock in the evening. The

faithful who may have received Holy Communion on Holy Saturday morning are not permitted to receive It again before midnight of that day. But their attendance at midnight Mass enables them to satisfy their obligation of hearing Mass on Easter Sunday. Those who receive Holy Communion at midnight Mass are not permitted to receive It again later on Easter morning. Priests who celebrate the rite may again celebrate even two Masses if they ordinarily have an indult permitting this. For the celebrating of Mass at midnight or for the reception of Holy Communion at that Mass it is required that the communicants shall fast from ten o'clock in the evening; if the rite is celebrated earlier in the evening the celebrant and the communicants are required to fast from at least seven o'clock. The priest who celebrates Mass at midnight and again on Easter morning may take something *per modum potus* but not within an hour preceding the morning Mass.

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INTERNATIONAL LAY APOSTOLATE

A permanent committee for the International Lay Apostolate has been set up by Pope Pius XII to supervise lay participation in the apostolic work of the Church. This action was inspired by the success attending the First International Congress of the Lay Apostolate held in Rome last October. At this Congress there were present a thousand delegates from seventy-four countries. His Eminence, Giuseppe Cardinal Pizzardo, is heading a commission entrusted with the task of drafting a constitution for the new committee.

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LENTEN PAPAL APPEALS

On Ash Wednesday our Holy Father addressed the children of the United States in behalf of the needy children throughout the world.

In a letter to the Hierarchy of the United States, our Holy Father appealed for generous contributions to be made to the collection taken up on March 23rd, Laetare Sunday, for the benefit of the Bishops' Fund for the Relief of the Victims of War.

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BEATIFICATIONS

Beatification of four servants of God will take place on the following dates: May 4th, Mother Rosa Venerini; May 18th, Sister Raphaela Mary of the Sacred Heart; June 8th, Bertilla Boscardin; and June 22nd, Father Antonio Maria Pucci.

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BRAZILIAN JOINT PASTORAL

Discussing an amended Constitution which is under the consideration of the Brazilian Parliament, the Hierarchy of Brazil in a joint pastoral insisted that in view of the nation's Christian heritage the document should open with a dedication to Almighty God. The pastoral further affirmed that the document should guarantee a democratic state in accordance with the Gospel principles of freedom and justice; acknowledge human rights and duties; defend the family and the indissolubility of marriage; encourage large families; grant state recognition to marriages performed in the presence of a priest; surrender pretensions at a governmental monopoly in the field of education; ensure freedom for religious instruction; authorize Christian labor legislation designed to protect workers and farmers; assert the right to private property, limited only by the demands of the common welfare; assure the right to a plurality of trade unions, abolishing restrictions arising from religious discrimination; protect the right of existence for a plurality of political parties, banning only those that are totalitarian; outlaw abortion, protecting the infant's right to be born; provide safeguards against gambling and pornography; and reform the electoral procedure to assure a more direct participation of the voters in the responsibility of government.

SECULAR

NEW JERSEY BIBLE READING

The Supreme Court of the United States has declined to favor the parents' suit against the Borough of Hawthorne, New Jersey, to prevent Bible-reading in the public school. The Supreme Court dismissed the appeal on the ground that injury was not proved. The

Bible-reading is required under a State statute providing that teachers shall read without comment five verses from the Old Testament each day of the school year. The statute permits the dismissal of any child from attendance at this reading if the parents of the latter request it.

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NOISY JEHOVAH'S WITNESSES

The Supreme Court of the United States has also declined to review the case of Paul S. Geuss and Erich Fleischman, members of the sect of Jehovah's Witnesses, who were convicted in the Pennsylvania courts of the charge of violating an Allentown anti-noise ordinance. The conviction and fine had been upheld by a county court, the State Superior Court, and the State Supreme Court. The appellants contended that the anti-noise ordinance is unconstitutional inasmuch as it violates the freedom of speech and freedom of religious worship.

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UNIVERSAL MILITARY TRAINING

A survey of editorials in the Catholic press dealing with universal military training reveals strong opposition to it. The arguments employed to challenge the program were chiefly the following; a shift from the present selective service system has not been proved necessary; universal military training does not harmonize with American tradition but reflects the attitudes of policies adopted by military nations; and the program would subject every youth to moral dangers through camp life. Under the program all youths would be called up at the age of eighteen and would receive six months of military training. Thereafter they would be placed in the reserve forces for a period of seven and a half years.

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PRAYER IN THE UNITED NATIONS

The number of letters received by the United Nations asking for the establishment of a permanent prayer room and for the opening and the closing of the meetings of the United Nations with prayer is greater than that received on any other subject. This fact, coupled with the interest shown by various delegations, including

that of the United States, has overcome the lack of interest in the matter previously characteristic of certain high officials.

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SCHOOL AND CHURCH CONSTRUCTION

An increase in the amount of steel that may be used in school construction without an allotment from the National Production Authority has been announced. Five tons of carbon steel including two tons of structural steel may be " self-authorized " for a school construction project in any quarter of the year. This does not include wide-flange beams.

The National Production Authority has authorized nearly one hundred Catholic church construction projects with a total cost of almost twenty-eight million dollars. A news analysis made by the National Catholic Welfare Conference News Service shows one project to involve an expenditure of five and a half millions; another, an expenditure in excess of three million dollars; another, a million and a half; and two others, something in excess of a million.

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PROTESTANT MINISTERS DEFEND PAROCHIAL SCHOOLS

Very Rev. Edwin J. Van Etten, Dean of St. Paul's Episcopal Cathedral, Boston, has come to the defense of the teaching of religion in parochial schools. He insisted that Roman Catholics are citizens and that the use of public school busses ought to belong to them as such. He expressed his sympathy with the French system under which every child is given a subsidy and permitted to attend any school he or his parents choose.

An educational system in which the government would aid parochial schools of predominant faiths as well as the public schools was advocated in Fresno, California, by Very Rev. James M. Malloch, Dean of St. James' Episcopal Cathedral, who is President of the Fresno Board of Education.

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RELEASED TIME

1,890,000 Protestant children attending public schools are enrolled in released time religious education programs as reported by Dr.

Edwin L. Shaver to the annual meeting of the Division of Christian Education of the National Council of Churches.

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DAILY PRAYER IN NEW YORK PUBLIC SCHOOLS

A resolution supporting the proposal of the New York State Board of Regents for the introduction of daily prayer into the public schools was adopted by the New York State School Boards Association with which ninety-eight per cent of the school boards of the State are affiliated. On the contrary, the proposal was challenged by the United Parents' Association on the ground that it would bring into the public schools outward manifestations of religious disagreement. It was censured also by Dr. J. Paul Williams, Professor of Religion at Mount Holyoke College, who, while affirming his own belief in a personal Deity, argued that the proposal of the Board of Regents was a threat to the religious liberty of the growing number of Americans who do not believe in God.

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RELIGIOUS TEACHERS IN PUBLIC SCHOOLS

The State Superintendent has ordered discontinued the tax support of fourteen Wisconsin public schools after a protest by the Protestant Bill of Rights Committee, organized by a group of Milwaukee Lutherans, after a study by its attorneys of the Lima Consolidated Grade School near Durand, Wisconsin, taught by Sisters. The challenging group alleged that these schools were under the domination of the Catholic Church and that, as a consequence, the schools failed to conform to State school laws. Most of the fourteen schools are in rural areas populated almost entirely by Catholics.

A suit has been filed in the Circuit Court at St. Louis seeking an injunction to restrain two Franklin County school districts from operating schools in which Sisters teach. The suit charges that three elementary schools, despite their designation as public schools by the State Department of Education, are unlawfully profiting from local and State tax funds.

The Casey County (Kentucky) Board of Education has been held by the State's Assistant Attorney General to be within its authority in furnishing fuel to the Catholic-owned school at Clementsville and in paying the salaries of two Sisters teaching there.

The school is in the same building as the church. It is used as a public elementary school and as a Catholic high school. Both Protestant and Catholic pupils attend. The challenge to the action of the Board of Education resulted from a report of the Bureau of School Service of the University of Kentucky which in November, 1951, claimed that the arrangement was a violation of the Constitution of Kentucky.

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PRAYER AT CITY COUNCIL MEETINGS

The City Council of Cleveland, after defeating a resolution to open each meeting with prayer, subsequently adopted it. The resolution specifies that the President shall invite representatives of the Protestant, Jewish, and Catholic religions to alternate in offering prayer for the guidance of the councilmen. When the resolution was first presented, the Council voted it down after its President, as quoted in the daily press, said that the opening of the meetings with prayer was not necessary. This brought a protest from citizens of all faiths. The President then claimed that he had been misunderstood.

Members of the City Council in Dubuque are opening their meeting with one minute of silent prayer.

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THE STATUE OF ST. FRANCES CABRINI

The Orleans Parish Court of Appeals has affirmed a lower court decree allowing the statue of St. Francis Cabrini to remain on city-owned property in New Orleans.

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PUERTO RICAN CONSTITUTION

Puerto Rico has approved a new "home rule" Constitution by a vote of 373,418 to 83,473. It provides for a complete separation of Church and State, forbidding the dedication of public property or public funds to the support of denominational schools. But children attending such schools will be entitled to dental and medical treatment and will be accorded the right to share in other social welfare activities available to public school pupils.

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RELIGIOUS REVILINGS IN PUBLIC SCHOOLS

The Board of Education in London, Ontario, Canada, has refused a request of the local Knights of Columbus that the use of public school buildings be prohibited for meetings in which the Catholic Church would be criticized. The request followed an announcement that the Canadian Protestant League was to hold a meeting in which a speaker was scheduled to discuss the topic, "Is Archbishop Stepinac Guilty or Not Guilty?"

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SEPARATE SCHOOLS IN BRITISH COLUMBIA

A statement has been issued by the executive committee of the British Columbia Teachers' Federation opposing proposals made by the British Columbia Catholic Educational Association that religious separate schools be integrated with the public school system. According to the proposed plan, the public school boards would take over the operation of the existing separate schools on a rental basis.

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PAROCHIAL SCHOOLS AS PUBLIC SCHOOLS

In Vancouver, Catholic educators have received a favorable ruling that a parochial school is a public school. The decision was made on an appeal from a ruling of the city building department refusing a permit for the erection of a parochial school in a one-family dwelling area in which a zoning by-law permits only public schools.

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"WAR GUILT" CLAUSES AFFECTING ITALY

The decision of eight nations led by the United States to cancel humiliating "war guilt" clauses in the peace treaty has restored Italy to the family of nations as full partner. The United States was joined in this decision by Britain, France, Holland, Belgium, New Zealand, Greece, and Nationalist China.

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DISPLACED PERSONS IN ITALY

A nation-wide group of one thousand persons to be known as the American Committee on Italian Immigration will be formed to aid

displaced persons in Italy to settle in other parts of the world. The Committee will function as a member of the National Catholic Welfare Conference War Relief Services.

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CANADIAN AID TO UNIVERSITIES

The Province of Quebec has accepted about two million dollars as a one-year grant from the federal government at Ottawa in aid of universities. It delayed its acceptance until it had safeguarded provincial rights from federal interference in education.

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CATHOLIC EUROPEAN SECRETARIAT

The new Catholic Secretariat for European Problems, set up in Strasbourg, seat of the European Assembly, will deal with issues arising from the proposed European Union. The executive committee reports that its purpose is to provide with pertinent documents both individuals and organizations in various interested countries to apprize them of the moral and spiritual aspects of European problems.

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BADEN CREDITS FOR RELIGIOUS INSTRUCTION

A decree issued by the Baden government of West Germany authorizes the schools to grant the same marks for proficiency in religion as for proficiency in any other subject in the curriculum. This ruling was issued in response to a request made by both the Evangelical and the Catholic churches in Baden.

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CREDIT DENIED CATHOLIC INSTRUCTION IN SWEDEN

Swedish children who are released from the classes of Lutheran catechetics receive no credit for religion though the general average is calculated by counting religion among the subjects of the curriculum. The low general average that is thus the lot of Catholic children will seriously interfere with their admission to higher schools. Moreover, Catholics cannot become school teachers because the latter must teach Lutheranism. The high government officials must be Lutherans. Marriages and births must be registered with the Lutheran minister.

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Book Review

THE NATURE OF LAW. Thomas E. Davitt, S.J., St. Louis, Missouri. B. Herder Book Co., St. Louis & London, 1951. Pp. 274. Price $4.00.

As the author states in his introduction, this book is in the nature of a historical introduction to the problem of the nature of law, i.e. the relation between the concept of law and the philosophy of intellect and will.

With this purpose in view, the author limits himself to a consideration of some of the more important works of some of the philosophers whose writings have had an important influence upon the development of that philosophy of intellect and will in connection with the concept of law. He, therefore, divides his work into two parts, in the first of which he considers those who have written to sustain the primacy of the will in the concept of law, and in the second of which he considers those who have sustained the primacy of the intellect in that connection.

The authors considered in the first section are: Henry of Ghent, John Duns Scotus, William Ockham, Gabriel Biel, Alphonse de Castro, Francis Suarez. The authors considered in the second section are: St. Albert the Great, St. Thomas Aquinas, Cajetan, Dominic Soto, Bartholomew Medina, St. Robert Bellarmine.

The problem discussed in this book is one of great importance for Philosophy of Law. It has agitated the minds of men for centuries. It was, perhaps, not as precisely formulated prior to the period considered by the author, or as carefully worked out in the period subsequent thereto, but it has always been a timely subject for discussion. Substantially, the solutions reduce themselves either to the acceptance of a "rule of reason," in which the intellect has the primacy, or to the acceptance of the "iron whim" of the man temporarily in power, when the will has the primacy.

The works of the Law of Nature Jurists, Grotius, Wolff, *et al.*, and those of Kant, all of which have had so much to do with form-

ing the patterns of the modern mind in connection with law are not here discussed, nor could they be in view of the limited scope of the work. It is to be hoped, however, that the author will subsequently continue his work in this field, and, after the foretaste given in his introduction to the problem, give us also a critique of what has subsequently been written in connection with this problem which even today is the source of many of the difficulties which beset the states of the world in their relations with their own subjects as well as in relation to their neighbor states.

THOMAS OWEN MARTIN

THE CATHOLIC UNIVERSITY OF AMERICA
WASHINGTON, D. C.

RELIGIOUS INSTRUCTION IN SYRIA

A decree has been issued by the Syrian government making religious instruction compulsory in Syria's public schools and affecting all primary, technical, secondary, and commercial schools, as well as teachers' training colleges. However, students will be given courses in their own religion.

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CATHOLICISM AND AMERICAN FREEDOM

The book to which Prof. James M. O'Neill has given this title is regarded in many Catholic quarters as a convincing reply to Paul Blanshard. A similar evaluation of it appears in a book review in the New York *Herald-Tribune*, written by F. Ernest Johnson, Executive Director of the Research Department of the National Council of Churches of Christ in the United States. This reviews avers that every person who is making use of Mr. Blanshard's book owes it to himself and those he seeks to influence to lay Mr. O'Neill's reply on the same table alongside it. It further reports that the latter makes a *prima facie* case against many current generalizations as to what the Catholic Church teaches about Church and State, religious liberty, public education, and even about sin and salvation and the authority of the Pope.

Chronicle

GENERAL

His Eminence, Federico Cardinal Tedeschini, has been named Papal Legate to the thirty-fifth International Eucharistic Congress opening May 27th in Barcelona.

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Most Rev. Paolo Giobbe, D.D., Papal Internuncio to the Netherlands, attended the State funeral of George VI as envoy extraordinary. In Rome seven Cardinals, as well as the President and the Prime Minister of Italy, were among the members of the large congregation attending evening memorial services for the late King held in the Church of the Holy Apostles on the day of his funeral. The services included the singing of the Litany of the Saints, special prayers, hymns sung by the Capella Giulia from St. Peter's Basilica, and blessing with the relic of the true Cross.

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Most Rev. Martin Lucas, D.D., Apostolic Delegate to the Union of South Africa, has been named Papal Legate to the Marian Congresss to be held April 30th in South Africa.

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Most Rev. Giovanni Dellepiane, D.D., formerly Papal Internuncio to Austria, has now become Papal Nuncio to that country and the Legation of the latter to the Holy See has become an Embassy.

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April 15–18, the forty-ninth annual convention of the National Catholic Educational Association was held in Kansas City, Missouri. Most Rev. Joseph E. Ritter, D.D., Archbishop of St. Louis, celebrated the opening Solemn Pontifical Mass, at which the sermon was preached by Most Rev. Francis P. Keough, D.D., Archbishop of Baltimore, President General of the National Association.

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April 23–26, the annual meeting of the Pontifical Society for the Propagation of the Faith will take place in Rome.

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April 19, 20, the thirty-second annual meeting of the National Council of Catholic Men will be held in Toledo, Ohio.

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March 24–26, the annual convention of the National Catholic Conference on Family Life was held in Columbus. Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington and Episcopal Chairman of the Social Action De-

partment of the National Catholic Welfare Conference, closed the convention in a Family Holy Hour observed in the Cathedral of St. Joseph. Most Rev. John K. Mussio, D.D., Bishop of Steubenville, preached at the Holy Hour.

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June 18–21, the forty-second Catholic Press Convention will be held at the University of Notre Dame.

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May 1–4, the National Council of Catholic Nurses will hold its sixth biennial convention in Cleveland. Most Rev. Richard J. Cushing, D.D., Archbishop of Boston and Chairman of the Department of Lay Organizations of the National Catholic Welfare Conference, will be the principal speaker at the convention banquet at which the toastmaster will be Most Rev. Floyd L. Begin, D.D., Auxiliary Bishop of Cleveland. On the final day of the convention, Most Rev. Edward F. Hoban, D.D., Archbishop-Bishop of Cleveland, will offer a Solemn Pontifical Mass at which the sermon will be preached by Very Rev. Ignatius Smith, O.P., S.T.Lr., Ph.D., Dean of the School of Philosophy of The Catholic University of America.

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May 2–4, a regional Congress of the Confraternity of Christian Doctrine will meet in conjunction with the North Carolina Catholic Laymen's Association.

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March 28, the fourteenth annual conference on Eastern Rites and Liturgies opened under the sponsorship of Fordham University.

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March 15–16, the annual convention of the Third Order Secular of Our Lady of Mt. Carmel was held in New Orleans. Most Rev. Joseph F. Rummel, D.D., Archbishop of New Orleans, presided at the Solemn Mass celebrated during the meeting.

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His Eminence, Cardinal Giovanni Battista Nasalli-Rocca di Corneliano, Archbishop of Bologna, died March 13.

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DIGNITIES

April 30, Most Rev. Joseph A. Burke, D.D., was installed in St. Joseph's Cathedral by His Eminence, Francis Cardinal Spellman, as the ninth Bishop of Buffalo.

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May 8, Most Rev. Thomas K. Gorman, D.D., Titular Bishop of Rhasus, will be installed as Coadjutor with the right of succession to Most Rev. Joseph P. Lynch, D.D., Bishop of Dallas, and will offer Solemn Pontifical Mass in the Cathedral of the Sacred Heart.

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March 19, Most Rev. Joseph M. McShea, D.D., was consecrated Titular Bishop of Mina and Auxiliary of Philadelphia. The consecration took place in the Cathedral of SS. Peter and Paul, Philadelphia. The Most Reverend Apostolic Delegate was the consecrating prelate. The co-consecrators were Most Rev. Eugene J. McGuinness, D.D., Bishop of Oklahoma City and Tulsa, and Most Rev. William D. O'Brien, D.D., Auxiliary of Chicago. The sermon was preached by Most Rev. John F. O'Hara, C.S.C., D.D., Archbishop of Philadelphia.

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March 25, Most Rev. Lambert A. Hoch, D.D., was consecrated the third Bishop of Bismarck in St. Joseph's Cathedral, Sioux Falls, South Dakota, by the Most Reverend Apostolic Delegate. The co-consecrators were Most Rev. William O. Brady, D.D., Bishop of Sioux Falls, and Most Rev. Francis J. Schenk, D.D., Bishop of Crookston. The sermon was preached by Most Rev. John Gregory Murray, D.D., Archbishop of St. Paul. Archbishop Murray also presided at the installation on April 2 in the Cathedral of the Holy Spirit, Bismarck.

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Most Rev. Daniel J. Feeney, D.D., Auxiliary of the Diocese of Portland, Maine, since 1946, has been named Coadjutor of that Diocese with the right of succession to Most Rev. Joseph E. McCarthy, D.D., its Bishop since 1932.

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March 20, Most Rev. Karl J. Alter, D.D., Archbishop of Cincinnati, accepted the 1952 *Rerum Novarum* award of the School of Business Administration of St. Peter's College, Jersey City, New Jersey, for outsanding achievements in the field of labor-management relations.

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March 20, Most Rev. Hugh L. Lamb, D.D., Bishop of Greensburg, accepted an honorary degree of Doctor of Laws from St. Vincent's College, Latrobe, Pa.

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Rt. Rev. Msgr. Charles M. McBride has been named Assistant National Director of the Society for the Propagation of the Faith. He had been Director of the Society in Cleveland since 1945.

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The following have been promoted to the rank of Domestic Prelate: Rt. Rev. Msgrs. Donald M. Carroll, of the Archdiocese of Chicago; Joseph C. Burns, Robert E. Lee, James J. Mooney, and Francis V. Murphy, of the Archdiocese of Boston; Joseph A. Aughney, Francis J. Barta, Robert P. Burns, Joseph B. Falke, Floyd F. Fischer, John Hallinan, John S. Juricek, and Joseph H. Osdick, of the Archdiocese of Omaha; James E. Callaghan, Joseph F. Canfield, William P. Christian, Jeremiah J. Davern, Michael S. Dwyer, Alexis L. Hopkins, Joseph M. Osip, John P. Phelan, John L. Powers, Edward G. Quaid, Clement D. Shaughnessy, and Martin J. Watley, of the Diocese of Syracuse; Henry A. Boltz, Clarence H. Coughlan, Aime Giguere, Teresio Di Mingo, Vital E. Nonorgues, James F. Savage, and Edward F. Ward, of the Diocese of

Portland, Maine; John J. Brune, Jesse L. Gatton, and George H. Powell, of the Diocese of Springfield, Illinois; John A. Fearon, Henry Frank, T. Leo Keaveny, Peter J. Kroll, George A. Raunch, and Francis Zitur, of the Diocese of St. Cloud; and Henry J. Grigsby, of the Diocese of Steubenville.

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Very Rev. Msgr. Henry B. O'Donnell, of the Diocese of Steubenville, has been named a Papal Chamberlain.

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Dr. Dominick A. Macedonia, of the Diocese of Steubenville, has been named a Knight Commander of the Order of St. Gregory the Great.

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Henry Amiel, head of the War Relief Services of the National Catholic Welfare Conference in Vienna, has been awarded the Commander's Cross of the Order of St. Sylvester. The award was made through the good offices of His Eminence, Theodore Cardinal Innitzer.

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The following were made Knights of the Holy Sepulchre: Most Rev. M. S. Garriga, D.D., Bishop of Corpus Christi, and the following members of his Diocese: Raul Casso, Dudley Dougherty, Wilson Heard, Ben F. Vaugham, and Thomas Vessels.

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The following members of the Diocese of Corpus Christi were made Ladies of the Holy Sepulchre: Mmes. J. E. Bauer, F. William Carr, Mary E. Lambert, Kate S. O'Connor, Ben F. Vaugham, Thomas Vessels, and Anne S. Wells. The following members of that Diocese were made Ladies Commanders of the Holy Sepulchre: Mmes. James R. Doughterty, Sarita K. East, and Elena S. Kenedy.

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The medal *Pro Ecclesia et Pontifice* has been conferred on Mrs. Joseph F. Hermann, of Chicago, and on Edgar L. Matthews, of Augusta, Georgia, an organizer of and for ten years President of the Colored Catholic Laymen's Association of Georgia.

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The second annual award of the Cardinal Spellman-Aquinas Medal was presented to Etienne Gilson, of the Pontifical Institute of Medieval Studies, Toronto, at the twenty-sixth annual meeting of the American Catholic Philosophical Association in Cleveland, April 15–16.

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E. V. D'Berger and Dominic Pagano have received from the Canons of the Basilica of St. John Lateran, the Lateran Cross, which was presented to them by Most Rev. Aloysius J. Willinger, C.SS.R., D.D., Coadjutor of Monterey-Fresno, in recognition of special services to the Diocese and of their notable contributions to the San Joaquin Memorial High School.

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Thomas E. Murray, a member of the United States Atomic Energy Commission, was named the 1952 recipient of the Laetare Medal, awarded by the University of Notre Dame.

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Catherine E. Rich, Registrar of The Catholic University of America, received the honorary Doctor of Laws at the academic convocation held in observance of the twenty-fifth anniversary of Regis College, Weston, Massachusetts.

THE RICCOBONO SEMINAR OF ROMAN LAW IN AMERICA

Date: April 3, 1952.

Author: Dr. Vladimir Gsovski, Chief of the Foreign Law Section of the Library of Congress.

Title: "Roman Law and Soviet Law".

Points treated: Roman Law in Russia on the eve of the Revolution; original attitudes of the Soviets to any law and to Roman Law in particular; the new economic policy and the new Soviet Codes related to Roman Law; and the relation to Roman Law of the modifications in Soviet legal theory since 1936.

THE CANON LAW SOCIETY OF AMERICA

May 6, 7, 8 will be observed by three Regional Conferences of The Canon Law Society of America with meetings and discussions. The Eastern Regional Conference will meet May 7 and 8 in New York City; the Midwest Conference, on May 6 and 7 in Youngstown, Ohio; and the Greater Kansas City Conference, on May 6, in Kansas City, Kansas. At the Eastern Conference's meeting papers will be read on "Baptismal Certificates for Adopted Children", by Rev. E. Robert Arthur, J.C.L.; "Proof of Exclusion of *Bonum Prolis:* Recent Jurisprudence", by Rev. Thomas A. Donnellan, J.C.D.; "Discussions with Non-Catholics: Canonical Legislation and Its Practical Application", by Rt. Rev. Msgr. Walter J. Furlong; and "Juridical Status of Religious Living Outside Their Religious Houses", by Rev. Joseph J. Comyns, C.SS.R., J.C.D. At the Midwest Conference's meeting a paper will be read on "The Diocesan Chancery Office", by Rt. Rev. Msgr. Paul F. Leibold, J.C.D. Panel discussions will treat of *ratum et non consummatum* cases and with Roman responses.